The Complete Anti-Federalist

Edited, with Commentary and Notes, by

Herbert J. Storing

With the Assistance of Murray Dry

VOLUME 2

Objections of Non-Signers of
the Constitution
and
Major Series of Essays
at the Outset

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For convenient cross reference, and without any other editorial purpose, a three-part number has been assigned to each paragraph (or group of paragraphs where they are brief) of the writings assembled in *The Complete Anti-Federalist*. The first number denotes the volume, the second the position of the essay or series within that volume, and the third the paragraph. A reference to, for example, Federal Republican 3.16.13 locates a passage in the Review of the Constitution Proposed by the Late Convention, by A Federal Republican, which can be found in volume 3 of this edition. These numbers are distinct from any numbering by the authors themselves or any of their publishers; Centinel III, 2.7.73 refers to the third letter of Centinel, in volume 2 below. The abbreviation "intro." is used for Storing's introductions to volumes or parts of volumes as well as the introductions to individual texts. A reference to, say, 2.8.intro. denotes the introductory sketch and outline of the Federal Farmer, located in volume 2. Cross references to volume 1 are by page number. A cross reference from one note to another uses a three-part number plus a note number, so that the reader may refer to the text as well as the note if necessary.

Murray Dry

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Crosskey, *Politics and the Constitution*	William W. Crosskey, *Politics and the Constitution in the History of the United States* (Chicago 1953)
Curtis, *Constitutional History*	George Ticknor Curtis, *Constitutional History of the United States: From Their Declaration of Independence to the Close of the Civil War* (New York 1889)
Dall.	Dallas' Pennsylvania and United States Reports, 1790–1800
Documentary History of the Constitution	*A Documentary History of the Constitution of the United States of America, 1786–1870; Derived from the Records, Manuscripts, and Rolls Deposited in the Bureau of Rolls and Library of the Department of State* (Washington, D.C., 1894–1905)
Elliot	*The Debates of the State Conventions on the Adoption of the Federal Constitution, as Recommended by the General Convention at Philadelphia in 1787,* 2d ed., ed. Jonathan Elliot (Philadelphia 1866)
Evans, *Early American Imprints*	Charles Evans, *Early American Imprints, 1639–1800* (Worcester, Mass., 1955–)
Farrand	*The Records of the Federal Convention of 1787,* ed. Max Farrand (New Haven 1911–37)
The Federalist	*The Federalist,* ed. Jacob E. Cooke (Middletown, Conn., 1961)
Ford, *Essays*	*Essays on the Constitution of the United States, Published during Its Discussion by the People, 1787–1788,* ed. Paul Leicester Ford (Brooklyn, N.Y., 1892)

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Jensen, *New Nation*	Merrill Jensen, *The New Nation* (New York 1950)
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Lincoln, *Collected Works*	Abraham Lincoln, *Collected Works,* ed. Roy P. Basler (New Brunswick, N.J., 1953)
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Thorpe, *Federal and State Constitutions*	*The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America,* comp. Francis Newton Thorpe (Washington, D.C., 1931–44)
Washington, *Writings*	*The Writings of George Washington from the Original Manuscript Sources, 1745–1799,* ed. John C. Fitzpatrick (Washington, D.C., 1931–44)
Wheat.	Wheaton's United States Supreme Court Reports, 1816–27

PART 1

Objections of Non-Signers of the Constitution

Introduction

The Anti-Federalist argument opens with the statements of those members of the Constitutional Convention who refused to sign the document. Abraham Yates and Robert Lansing left the Convention on 10 July; Luther Martin left on 10 September; Edmund Randolph, Elbridge Gerry, and George Mason remained to the end, and their explanations of their refusal to sign occupied a major part of the last two days of the Convention. In the view of these men, the public good was to be served, not by following Franklin and silently sacrificing their doubts, but by going to the country with public declarations of the reasons for their opposition. Not surprisingly, their statements, made as they were by distinguished figures who had participated in the secret business at Philadelphia, played a prominent part in the debate over the Constitution.

Elbridge Gerry's Objections to Signing the National Constitution

MASSACHUSETTS CENTINEL
3 November 1787

An active revolutionary and faithful member of the Continental Congress, Elbridge Gerry was a signer of the Declaration of Independence and the Articles of Confederation. He was a member of the Philadelphia Convention, taking an active part in its deliberation but refusing to sign the Constitution. His fundamental concerns were in many ways similar to those of Edmund Randolph, another non-signer, although Randolph finally joined the Federalist ranks and gave the Constitution powerful support in the Virginia convention.[1] One of the old Republicans, described by Samuel Eliot Morison as ever faithful to the Spartan ideals of 1776,[2] Gerry, like Randolph, thought that "the evils we experience flow from the excess of democracy." "He had," he confessed at the Constitutional Convention, "been too republican heretofore: he was still however republican, but had been taught by experience the danger of the levilling spirit."[3] Gerry was the chairman of the committee that worked out the basis for the compromise on the representation in the two branches of the legislature. "We were neither the same Nation nor different Nations. We ought not therefore to pursue the one or the other of these ideas too closely."[4] He thought that the plan finally adopted was almost entirely a national government, but it is not clear how far this was an important objection to him.[5]

There are two lists of Gerry's objections to the Constitution, one given near the conclusion of the Philadelphia Convention,[6] the other in Gerry's Letter to the Massachusetts Legislature, which he is said to have written with the assistance of Richard Henry Lee[7] and which is printed below. The letter is brief and contains little argument to support the objections; but attention should be called to its manifest and deliberate moderation, quite properly emphasized by Gerry's biographer.[8] On the last day of the Convention, Gerry said that he feared that the proposed Constitution might trigger a civil war, particularly in Massachusetts. "In that State there are two parties, one devoted to Democracy, the worst he thought of all political evils, the other as violent in the opposite extreme. From the collision of

these in opposing and resisting the Constitution, confusion was greatly to be feared. He had thought it necessary for this and other reasons that the plan should have been proposed in a more mediating shape, in order to abate the heat and opposition of parties—As it had been passed by the Convention he was persuaded it would have a contrary effect.''[9] Gerry's public objections were written with a view to these circumstances.

Gerry's Letter was first published in the *Massachusetts Centinel*, 3 November 1787, from which it is taken here. It seems to have had considerable effect[10] and was widely reprinted throughout the country. The chief reply was made by Oliver Ellsworth in the fourth and fifth numbers of his letters of The Landholder. In later letters Ellsworth accused Gerry of opposing the Constitution only because the Convention rejected a selfishly motivated proposal by Gerry regarding the redemption of the old Continental money, of which he was a large holder. A series of warm exchanges ensued between Ellsworth, on the one side, and Luther Martin and Gerry on the other, which reveals the dubious character of the charges.[11] Rufus King gave a point-by-point refutation of Gerry's objections in a speech in the Massachusetts convention.[12]

1. See below, Randolph 2.5.

2. *Dictionary of American Biography* VII, 223. Gerry's republicanism is the theme of the thoughtful recent biography by George A. Billias, *Elbridge Gerry: Founding Father and Republican Statesman* (New York 1976); see xvi, 30, 36, 68, 70, 72, 144, 153–56, 331–36. It may be questioned whether a man for whom the signing of the radically individualistic and libertarian Declaration of Independence was ''the most important single act of his entire life'' (p. 70) can consistently have viewed political society, as Billias says Gerry did, as an organic entity that ought to be guided by those entitled by nature to rule and devoted to the pursuit of virtue. While Billias reasonably warns against making excessive theoretical demands of secondary, mainly practical men like Gerry, my own reading of Billias' evidence suggests that the bedrock of Gerry's republicanism was after all the equality and individual rights of the Declaration of Independence. Doubtless a rather vague residual classical republicanism played, for Gerry as well as many of the other Anti-Federalists, a significant psychological as well as rhetorical role.

3. Farrand I, 48 (31 May).

4. Farrand I, 532 (5 July); see 467 (29 June), 522 (3 July).

5. See Farrand I, 80 (2 June).

6. Farrand II, 632–33 (15 September): ''Mr. Gerry, stated the objections which determined him to withhold his name from the Constitution. 1. the duration and re-eligibility of the Senate. 2. the power of the House of Representatives to conceal their journals. 3—the power of Congress over the places of election. 4 the unlimited power of Congress over their own compensations. 5 Massachusetts has not a due share of Representatives allotted to her. 6. 3/5 of the Blacks are to be represented as if they were freemen. 7. *Under* the power over commerce, monopolies may be established. 8. The vice president being made head of the Senate. He could however he said get over all these, if the rights of the Citizens were not rendered insecure 1. by the general power of the Legislature to make what laws they may please to call necessary and proper. 2. raise armies and money without limit. 3. to establish a tribunal without juries, which will be a Star-chamber as to Civil cases. Under such a view of the Constitution, the best that could be done he conceived was to provide for a second general Convention.''

On the different lists of Gerry's objections, see Billias, *Elbridge Gerry* 199–208.

7. The letter was written in New York on 18 October. George Bancroft says the letter was written with the assistance of Richard Henry Lee, apparently relying on a somewhat ambiguous remark by the unfriendly Oliver Ellsworth. See Bancroft, *History of the Formation of the Constitution of the United States of America* II, 230; The Landholder VI, Ford, *Essays* 161.

8. James T. Austin, *The Life of Elbridge Gerry* (Boston 1829) 45–46.

9. *Farrand* II, 646–47 (17 September).

10. See Main, *Antifederalists* 201; Rutland, *The Ordeal of the Constitution* 24, 74–75; Billias, *Elbridge Gerry* 209.

11. See Farrand II, 326, 356, 377, 412ff. See Ford, *Essays* 125–33, 150–60, 172–77, 182–88, 337–83; Gerry's second letter in this series, taken by Ford from a reprint in the *New York Journal*, was first published in the Boston *American Herald* 18 April 1788. See also McDonald, *We the People* 105–6; Beard, *An Economic Interpretation of the Constitution of the United States* 98, n. 1; Billias, *Elbridge Gerry* 189–90.

12. *The Life and Correspondence of Rufus King*, ed. Charles R. King (New York 1894) I, 303–8. Other replies to Gerry include those by A Federalist, *Boston Gazette* 5 November 1787; One of the People, *Massachusetts Centinel* 17 November 1787; and Atticus, Boston *Independent Chronicle* 22 November 1787.

Hon. Mr. Gerry's objections to signing the National Constitution.

(The following Letter, on the subject of the American Constitution, from the Hon ELBRIDGE GERRY, *Esq. one of the Delegates representing this Commonwealth in the late Federal Convention, to the Legislature, was on Wednesday last read in the Senate and sent down to the House of Representatives, where it was yesterday read and sent up. As it contains opinions on a subject of the first importance to our country at this day, we have obtained a copy of it for insertion—and are happy to have it in our power thus early to communicate it to the publick.)*

New-York, 18th October, 1787.

Gentlemen,

2.1.1 I have the honour to inclose, pursuant to my commission, the constitution proposed by the federal Convention.

To this system I gave my dissent, and shall submit my objections to the honourable Legislature.

It was painful for me, on a subject of such national importance, to differ from the respectable members who signed the constitution: But conceiving as I did, that the liberties of America were not secured by the system, it was my duty to oppose it.—

2.1.2 My principal objections to the plan, are, that there is no adequate provision for a representation of the people—that they have no security for the right of election—that some of the powers of the Legislature are ambiguous, and others indefinite and dangerous—that the Executive is blended with and

will have an undue influence over the Legislature—that the judicial department will be oppressive—that treaties of the highest importance may be formed by the President with the advice of two thirds of a *quorum* of the Senate—and that the system is without the security of a bill of rights. These are objections which are not local, but apply equally to all the States.

2.1.3 As the Convention was called for "the *sole* and *express* purpose of revising the Articles of Confederation, and reporting to Congress and the several Legislatures such alterations and provisions as shall render the Federal Constitution adequate to the exigencies of government and the preservation of the union," I did not conceive that these powers extended to the formation of the plan proposed, but the Convention being of a different *opinion*, I acquiesced in *it*, being fully convinced that to preserve the union, an efficient government was indispensibly necessary; and that it would be difficult to make proper amendments to the articles of Confederation.

2.1.4 The Constitution proposed has few, if any *federal* features, but is rather a system of *national* government: Nevertheless, in many respects I think it has great merit, and by proper amendments, may be adapted to the "exigencies of government," and preservation of liberty.

2.1.5 The question on this plan involves others of the highest importance—1st. Whether there shall be a dissolution of the *federal* government? 2dly. Whether the several State Governments shall be so altered, as in effect to be dissolved? and 3dly, Whether in lieu of the *federal* and *State* Governments, the *national* Constitution now proposed shall be substituted without amendment? Never perhaps were a people called on to decide a question of greater magnitude—Should the citizens of America adopt the plan as it now stands, their liberties may be lost: Or should they reject it altogether Anarchy may ensue. It is evident therefore, that they should not be precipitate in their decisions; that the subject should be well understood, lest they should refuse to *support* the government, after having *hastily* accepted it.

2.1.6 If those who are in favour of the Constitution, as well as those who are against it, should preserve moderation, their discussions may afford much information and finally direct to an happy issue.

2.1.7 It may be urged by some, that an *implicit* confidence should be placed in the Convention: But, however respectable the members may be who signed the Constitution, it must be admitted, that a free people are the proper guardians of their rights and liberties—that the greatest men may err—and that their errours are sometimes, of the greatest magnitude.

Others may suppose, that the Constitution may be safely adopted, because therein provision is made to *amend* it: But cannot *this object* be better attained before a ratification, than after it? And should a *free* people adopt a form of Government, under conviction that it wants amendment?

And some may conceive, that if the plan is not accepted by the people, they will not unite in another: But surely whilst they have the power to amend, they are not under the necessity of rejecting it.

2.1.8 I have been detained here longer than I expected, but shall leave this place in a day or two for Massachusetts, and on my arrival shall submit the reasons (if required by the Legislature) on which my objections are grounded.[1]

I shall only add, that as the welfare of the union requires a better Constitution than the Confederation, I shall think it my duty as a citizen of Massachusetts, to support that which shall be finally adopted, sincerely hoping it will secure the liberty and happiness of America.

I have the honour to be, Gentlemen, with the highest respect for the honourable Legislature and yourselves, your most obedient, and very humble servant,

E. Gerry.

The Hon. Samuel Adams, Esq.
President of the Senate; and
The Hon. James Warren, Esq.
Speaker of the House of Representatives,
of Massachusetts.

1. While Gerry played no major role in the ratification debates and was not a member of the ratifying convention, he was invited to sit with the convention to answer questions of fact that might be put to him. Gerry accepted but caused a flurry of controversy when he attempted to correct what he thought were misstatements of fact regarding his part in the compromise resulting in an equal representation of the states in the Senate. Gerry wrote a letter to the vice-president of the Convention explaining his view of the altercation, enclosing a "State of Facts" regarding the pertinent deliberations. These, together with the exchanges with A Landholder (Ford, *Essays* 161), are of value to the historian of the formation of the Constitution but contribute little or nothing to the Anti-Federalist argument. The letter to the convention and "State of Facts" are printed in *Debates and Proceedings in the Convention of the Commonwealth of Massachusetts Held in the Year 1788 and Which Finally Ratified the Constitution of the United States* (Boston 1856) 65–71. See Billias, *Elbridge Gerry* 211–13.

George Mason's Objections to the Constitution of Government Formed by the Convention

1787

George Mason was described by George Ticknor Curtis as "one of the most profound and able of all the American statesmen opposed to the Constitution, while . . . inferior in general powers and resources to not more than two or three of those who framed or advocated it,"[1] a judgment shared by his contemporaries. He was distinguished by the genuineness of his preference for private life and for the significance of his contributions when called to public duty. Active in the revolutionary agitation in Virginia, Mason participated in the framing of the Virginia constitution and wrote the widely copied Virginia Declaration of Rights. Although fearful of augmentation of power in the general government, Mason accepted an appointment to the Philadelphia Convention, where he took an active part. Toward the end of the Philadelphia deliberations, however, he became increasingly critical, objecting especially to the compromise dealing with navigation acts and the slave trade, and finally refused to sign the Constitution. Mason framed his objections during the last few days of the Philadelphia Convention.[2] They were circulated in manuscript among Mason's friends before being published in newspapers and as a broadside in November 1787. They were supposed by Washington to have provided a guide for the Sixteen Seceding Members of the Pennsylvania Assembly; but the similarities are not very great, and it is scarcely accurate to say, as Washington does, that Mason's objections were "detailed" in the Pennsylvanians' address.[3]

The publication history of the Objections is complex and somewhat obscure. Robert Rutland, the editor of Mason's papers, speculates that they were printed in the Philadelphia press about 4 October. No such printing has been found, but Rutland thinks that it must have existed, since James Wilson's "Statehouse speech" of 6 October was a "frank refutation" of Mason's remarks.[4] It is true that George Washington praised the Wilson speech as placing "the most of Col. Mason's objections in their true point of light . . . ,"[5] but again Washington's reading seems to have been rather casual. Although Mason and Wilson both begin with the question of a bill of rights,

they follow quite different lines and treat different issues. The evidence for an early October publication does not seem to be very persuasive.

The Objections were accurately printed by a Federalist writer, Brutus, who followed with a detailed reply, in the Alexandria *Virginia Journal* of 22 November and 6 December 1787. Brutus objected to what he called the clandestine circulation of the objections of so influential a man, and he defended his unauthorized publication as necessary to permit a general examination and as the foundation for his own reply. The day before, on 21 November, the Objections were printed in the *Massachusetts Centinel*, which appears to have been the first publication. They were subsequently printed in other New England papers. Thus, manuscript copies of the Objections made their way north and south from Philadelphia at about the same time. The New England versions, however, omitted the paragraph in which Mason complained of the power of Congress to pass commercial regulations by a simple majority,[6] and it was presumably to this that Mason referred when he told Jefferson that his objections "were first printed very incorrectly, without my Approbation or Privity; which laid me under some kind of Necessity of publishing them afterwards, myself."[7] Unfortunately, the printing that Mason had done has now been lost. It was presumably the basis for Paul Leicester Ford's reprint, which was taken from a broadside said to be printed by Thomas Nicholas (probably Thomas Nicholson, a Richmond printer).[8] Nothing of substance hinges on the question since all versions of the Objections (save the New England ones, with their omitted paragraph) are substantially the same. Printed here is the manuscript version sent by Mason to George Washington and dated 7 October 1787.[9]

Mason's Objections are sufficiently brief as to require no summary. Partly for that reason, together with their early appearance and the fame and position of their author, the Objections gave rise to a number of thoughtful replies. Madison wrote a reply to the manuscript version in a letter to Washington, 18 October 1787.[10] James Iredell presented a learned refutation in detail in his Marcus letters.[11] Other replies include a sharp and often personal criticism in the letters of A Landholder, by Oliver Ellsworth,[12] and sober point-by-point refutations by two unknown Virginians, Brutus, mentioned above, and Civis Rusticus.[13] The Objections were widely republished in various parts of the country, with the omission in the Middle and Eastern states of the paragraph regarding the damage to the South from commercial regulations.

Another contribution by George Mason, his speech to the Virginia ratifying convention, appears in volume 5 (5.17).

1. Curtis, *Constitutional History* I, 633. See generally Rowland, *The Life of George Mason*, and Helen Hill Miller, *George Mason, Constitutionalist* (Cambridge, Mass., 1938).

2. Rowland, *The Life of George Mason* II, 182–83, 387–90.

3. See Letter to Madison, 10 October 1787, quoted by Rowland, *George Mason* II, 187. See Pennsylvania House Minority 3.2, intro.

4. *The Papers of George Mason, 1725–1792*, ed. Robert Rutland (Chapel Hill 1970) III, 993 n; the Wilson speech is printed in McMaster and Stone 142–49.

5. Letter to David Stuart, 17 October 1787, Washington, *Writings* XXIX, 290.
6. See A Landholder, Ford, *Essays* 162, 172–73. See, e.g., the *Massachusetts Centinel* 21 November 1787; the Boston *Independent Chronicle* 22 November 1787; the *Connecticut Courant* 26 November 1787; the Pennsylvania *Freeman's Journal* 5 December 1787. At least one Southern paper reprinted the Objections from the Boston *Independent Chronicle*, thus omitting this paragraph directed specifically to the interests of the Southern states. See *State Gazette of South Carolina* 7 January 1788.
7. *Papers of George Mason* (ed. Rutland) III, 1045.
8. Ford, *Pamphlets*, 327.
9. This copy is among the Washington Papers in the Library of Congress.
10. Farrand III, 129–31; *Documentary History of the Constitution* IV, 334–36.
11. Ford, *Pamphlets* 333–70.
12. *Connecticut Courant* 10 December 1787; Ford, *Essays* 161–66.
13. *Virginia Journal and Alexandria Advertiser* 22 November, 6 December 1787 (see also *Philanthropos'* defense of Mason in the latter number); *Virginia Independent Chronicle* 30 January 1788.

Objections to the Constitution of Government formed by the Convention.—(1787)

There is no Declaration of Rights; and the Laws of the general Government being paramount to the Laws and Constitutions of the several States, the Declaration of Rights in the separate States are no Security.[1] Nor are the people secured even in the Enjoyment of the Benefits of the common-Law: which stands here upon no other Foundation than it's having been adopted by the respective Acts forming the Constitutions of the several States. 2.2.1

In the House of Representatives there is not the Substance, but the Shadow only of Representation; which can never produce proper Information in the Legislature, or inspire Confidence in the People; the Laws will therefore be generally made by Men little concern'd in, and unacquainted with their Effects and Consequences.* 2.2.2

The Senate have the Power of altering all Money-Bills, and of originating Appropriations of Money and the Sallerys of the Officers of their own Appointment in Conjunction with the President of the United States; altho' they are not the Representatives of the People, or amenable to them. 2.2.3

These with their other great Powers (vizt. their Power in the Appointment of Ambassadors and all public Officers, in making Treaties, and in trying all Impeachments) their Influence upon and Connection with the supreme Executive from these Causes, their Duration of Office, and their being a constant existing Body almost continually sitting, joined with their being one compleat Branch of the Legislature, will destroy any Balance in the Government, and enable them to accomplish what Usurpations they please upon the Rights and Libertys of the People. 2.2.4

*This Objection has been in some Degree lessened by an Amendment, often before refused, and at last made by an Erasure, after the Engrossment upon Parchment, of the word *forty*, and inserting *thirty*, in the 3d Clause of the 2d Section of the 1st Article.[2]

2.2.5 The Judiciary of the United States is so constructed and extended, as to absorb and destroy the Judiciarys of the several States; thereby rendering Law as tedious[,] intricate and expensive, and Justice as unattainable, by a great part of the Community, as in England, and enabling the Rich to oppress and ruin the Poor.[3]

2.2.6 The President of the United States has no constitutional Council (a thing unknown in any safe and regular Government) he will therefore be unsupported by proper Information and Advice; and will generally be directed by Minions and Favourites—or He will become a Tool to the Senate—or a Council of State will grow out of the principal Officers of the great Departments; the worst and most dangerous of all Ingredients for such a Council, in a free Country; for they may be induced to join in any dangerous or oppressive Measures, to shelter themselves, and prevent an Inquiry into their own Misconduct in Office;[4] whereas had a constitutional Council been formed (as was proposed) of six Members; vizt. two from the Eastern, two from the Middle, and two from the Southern States, to be appointed by Vote of the States in the House of Representatives, with the same Duration and Rotation of Office as the Senate, the Executive wou'd always have had safe and proper Information and Advice, the President of such a Council might have acted as Vice President of the United States, pro tempore, upon any Vacancy or Disability of the chief Magistrate; and long continued Sessions of the Senate wou'd in a great Measure have been prevented.[5]

2.2.7 From this fatal Defect of a constitutional Council has arisen the improper Power of the Senate, in the Appointment of public Officers, and the alarming Dependence and Connection between that Branch of the Legislature, and the supreme Executive.

2.2.8 Hence also sprung that unnecessary and dangerous Officer, the Vice President; who for want of other Employment, is made President of the Senate; thereby dangerously blending the executive and legislative Powers; besides always giving to some one of the States an unnecessary and unjust Pre-eminence over the others.

2.2.9 The President of the United States has the unrestrained Power of granting Pardon for Treason; which may be sometimes exercised to screen from Punishment those whom he had secretly instigated to commit the Crime, and thereby prevent a Discovery of his own Guilt.

2.2.10 By declaring all Treaties supreme Laws of the Land, the Executive and the Senate have in many Cases, an exclusive Power of Legislation; which might have been avoided by proper Distinctions with Respect to Treaties, and requiring the Assent of the House of Representatives, where it cou'd be done with Safety.

2.2.11 By requiring only a Majority to make all commercial and navigation Laws,[6] the five Southern States (whose Produce and Circumstances are totally different from that of the eight Northern and Eastern States) will be ruined; for such rigid and premature Regulations may be made, as will enable the Merchants of the Northern and Eastern States not only to de-

mand an exorbitant Freight, but to monopolize the Purchase of the Commodities at their own Price, for many years: to the great Injury of the landed Interest, and Impoverishment of the People: and the Danger is the greater, as the Gain on one Side will be in Proportion to the Loss on the other. Whereas requiring two thirds of the Members present in both Houses wou'd have produced mutual moderation, promoted the general Interest, and removed an insuperable Objection to the Adoption of the Government.

Under their own Construction of the general Clause at the End of the enumerated powers the Congress may grant Monopolies in Trade and Commerce, constitute new Crimes, inflict unusual and severe Punishments, and extend their Power as far as they shall think proper; so that the State Legislatures have no Security for the Powers now presumed to remain to them; or the People for their Rights. 2.2.12

There is no Declaration of any kind for preserving the Liberty of the Press, the Tryal by Jury in civil Causes; nor against the Danger of standing Armys in time of Peace.[1] 2.2.13

The State Legislatures are restrained from laying Export Duties on their own Produce. 2.2.14

The general Legislature is restrained from prohibiting the further Importation of Slaves for twenty odd Years; tho' such Importations render the United States weaker, more vulnerable, and less capable of Defence.

Both the general Legislature and the State Legislatures are expressly prohibited making ex post facto Laws; tho' there never was, or can be a Legislature but must and will make such Laws, when necessity and the public Safety require them; which will hereafter be a Breach of all the Constitutions in the Union, and afford precedents for other Innovations.

This Government will commence in a moderate Aristocracy; it is at present impossible to foresee whether it will, in it's Operation, produce a Monarchy, or a corrupt oppressive Aristocracy; it will most probably vibrate some Years between the two, and then terminate in the one or the other. 2.2.15

(By George Mason)

1. The Federalist replies generally denied the need of a Bill of Rights: Ellsworth contended that bills of rights were introduced in England as grants by the king to the people and have no place in a government that is considered as originating from the people. Ford, *Essays* 163. Iredell added that in England there was no constitution granting specific authority to the government. Ford, *Pamphlets* 335–36. Civis Rusticus argued that "the proposed government is thoroughly popular" and that "a government thus constituted stands in need of no bill or rights; the liberties of the people never can be lost, until they are lost to themselves, in a vicious disregard of their dearest interests, a sottish indolence, a wild licentiousness, a dissoluteness of morals, and a contempt of all virtue." *Virginia Independent Chronicle* 30 January 1788. For other Federalist claims that a bill of rights is not necessary, see Federal Farmer IV, 2.8.50 and nn. 38–40. The deepest and most comprehensive argument against the need for a bill of rights was presented by James Madison in his post-Convention letters to Jefferson of 24 October 1787, 15 March 1788, and 17 October 1788. Madison, *Writings* (ed. Hunt) V, 17–41, 269–75. (For Jefferson's response, see his letter to Madison of 15 March 1789, *The Writings of Thomas Jefferson*, ed. H. A.

Washington [Washington, D.C., 1853] III, 3–5.) Not all the Anti-Federalists thought the absence of a bill of rights was a major defect. Thus Samuel Chase wrote to John Lamb, "A declaration of rights alone will be of no essential service. Some of the powers must be abridged, or public liberty will be endangered, and, in time, destroyed." Samuel Chase to John Lamb, 13 June 1788, Leake, *Memoir of the Life and Times of General John Lamb* 310. See also Philadelphiensis 3.9.18 and DeWitt 4.3.7.

2. Farrand II, 643–44 (17 September). On the general subject of representation, see Federal Farmer VII–IX, 2.8.97–118; X, 2.8.133–37; Brutus III–IV, 2.9.42–48.

3. Iredell contended that the only alternative to an ineffective coercive authority over States was coercive authority over individuals. Some dependence must be placed on future legislatures. He gave this example of the ridiculous implications of Mason's fears: "Suppose an objection should be made that the future legislature should not ascertain salaries, because they might divide among themselves and their officers all the revenue of the Union. Will not every man see how irrational it is to expect that any government can exist which is to be fettered in its most necessary operations for fear of abuse?" Ford, *Pamphlets* 343–44. However, Iredell's ironical objection was in fact made by several Anti-Federalists. See DeWitt 4.3.23; [New Hampshire] Farmer 4.17.6; Albany Antifederal Committee 6.10.6.

4. See Iredell's extended discussion of the councils to the King of England and their implications for the matters at issue here. Ford, *Pamphlets* 344–50.

5. Mason had made such a proposal in the Philadelphia Convention, 7 September; Farrand II, 537–38, 541–42.

6. This is the paragraph omitted in the Northern newspapers.

7. Iredell: ". . . the Convention surely can be only answerable for the propriety of the powers given, not for the future virtues of all with whom those powers may be intrusted." "Men may be sure to suggest dangers from any thing, but it may truly be said that those who can seriously suggest the danger of a premeditated attack on the liberties of people from such a government as this, could with ease assign reasons equally plausible for mistrusting the integrity of any government formed in any manner whatever; and really it does seem to me, that all their reasons may be fairly carried to this position, that inasmuch as any confidence in any men would be unwise, as we can give no power but what may be grossly abused, we had better give none at all, but continue as we are, or resolve into total anarchy at once, of which indeed our present condition falls very little short." Ford, *Pamphlets* 357, 364.

Robert Yates and John Lansing
Reasons of Dissent

NEW YORK JOURNAL
14 January 1788

This letter was written by Robert Yates and John Lansing to the Anti-Federalist Governor of New York, George Clinton, explaining their reasons for dissenting from the Constitution and, indeed, leaving the Philadelphia Convention before its work was finished. Yates and Lansing were members of the Clinton party in New York, the former a justice of the New York Supreme Court, the latter a member and (in 1786 and 1788) Speaker of the New York Assembly. The letter is dated 21 December 1787 and was first published in the *New York Journal*, 14 January 1788, from which it is taken here; it was reprinted in newspapers in various parts of the country during the ratification controversy.

Yates and Lansing object on two grounds: (1) that the Convention exceeded its authority in forming a consolidated government, subversive of the states, and (2) that a general government extending its prohibitions and benefits equally over the extensive territory of the whole United States was impracticable. Both contentions are well, though briefly, argued. It may be noted that there is no objection to the absence of a bill of rights.

Late yesterday evening we were favored, by a correspondent, with the following COPY *of a* LETTER *from the Hon.* ROBERT YATES, *jun. and* JOHN LANSING, *Esquires, members of the general convention, lately held in the city of Philadelphia, assigning their reasons for giving their dissent to the constitution, agreed upon by that body, and which was laid before the legislature by his excellency the Governor, at the opening of the session, on Friday last.—From a consideration of the* very interesting nature *of this* LETTER *to the public, notwithstanding the late hour of its receipt, the editor thus expeditiously presents it to the public view.*

Reasons of Dissent.

Albany, Dec. 21, 1787.

Sir,

2.3.1 We do ourselves the honor to advise your excellency, that in pursuance of concurrent resolutions of the honorable senate and assembly, we have, together with Mr. Hamilton, attended the convention, appointed for revising the articles of confederation, and reporting amendments to the same.

2.3.2 It is with the sincerest concern we observe, that in the prosecution of the important objects of our mission, we have been reduced to the disagreeable alternative, of either exceeding the powers delegated to us, and giving our assent to measures which we conceived distructive of the political happiness of the citizens of the United States, or opposing our opinion to that of a body of respectable men, to whom those citizens had given the most unequivocal proofs of confidence.—Thus circumstanced, under these impressions, to have hesitated, would have been to be culpable: we therefore, gave the principles of the constitution, which has received the sanction of a majority of the convention, our decided and unreserved dissent: but we must candidly confess, that we should have been equally opposed to any system, however modified, which had in object the consolidation of the United States into one government.

2.3.3 We beg leave briefly to state some cogent reasons, which, among others, influenced us to decide against a consolidation of the states. These are reducible into two heads.

1st. The limited and well-defined powers under which we acted, and which could not, on any posible construction, embrace an idea of such magnitude, as to assent to a general constitution, in subversion of that of the state.

2dly. A conviction of the impracticability of establishing a general government, pervading every part of the United States, and extending essential benefits to all.

2.3.4 Our powers were explicit, and confined to the *sole and express purpose of revising the articles of confederation*, and reporting such alterations and provisions therein, as should render the federal constitution adequate to the exigencies of government, and the preservation of the Union.

2.3.5 From these expressions we were led to believe, that a system of consolidated government could not, in the remotest degree, have been in contemplation of the legislature of this state; for that so important a trust as the adopting measures which tended to deprive the state government of its most essential rights of sovereignty, and to place it in a dependent situation, could not have been confided by implication; and the circumstance, that the acts of the convention were to receive a state approbation in the last resort, forcibly corroborated the opinion, that our powers could not involve the

subversion of a constitution, which being immediately derived from the people, could only be abolished by their express consent, and not by a legislature, possessing authority vested in them for its preservation. Nor could we suppose, that if it had been the intention of the legislature, to abrogate the existing confederation, they would, in such pointed terms, have directed the attention of their delegates to the revision and amendment of it, in total exclusion of every other idea.

2.3.6 Reasoning in this manner, we were of opinion, that the leading feature of every amendment, ought to be the preservation of the individual states, in their uncontrouled constitutional rights, and that in reserving these, a mode might have been devised of granting to the confederacy, the monies arising from a general system of revenue; the power of regulating commerce, and enforcing the observance of foreign treaties, and other necessary matters of less moment.

2.3.7 Exclusive of our objections, originating from the want of power, we entertained an opinion, that a general government, however guarded by declarations of rights, or cautionary provisions, must unavoidably, in a short time, be productive of the destruction of the civil liberty of such citizens who could be effectually coerced by it; by reason of the extensive territory of the United States, the dispersed situation of its inhabitants, and the insuperable difficulty of controuling or counteracting the views of a set of men (however unconstitutional and oppressive their acts might be) possessed of all the powers of government; and who, from their remoteness from their constituents, and necessary permanency of office, could not be supposed to be uniformly actuated by an attention to their welfare and happiness; that however wise and energetic, the principles of the general government might be, the extremities of the United States could not be kept in due submission and obedience to its laws, at the distance of many hundred miles from the seat of government; that if the general legislature was composed of so numerous a body of men, as to represent the interests of all the inhabitants of the United States, in the usual and true ideas of representation, the expence of supporting it would become intolerably burthensome; and that, if a few only were vested with a power of legislation, the interests of a great majority of the inhabitants of the United States, must necessarily be unknown; or if known, even in the first stages of the operations of the new government, unattended to.

2.3.8 These reasons were, in our opinion, conclusive against any system of consolidated government: To that recommended by the convention, we suppose most of them very forcibly apply.

It is not our intention to pursue this subject farther than merely to explain our conduct in the discharge of the trust which the honorable the legislature reposed in us—Interested, however, as we are, in common with our fellow citizens, in the result, we cannot forbear to declare, that we have the

strongest apprehensions, that a government so organized, as that recommended by the convention, cannot afford that security to equal and permanent liberty which we wished to make an invariable object of our pursuit.

2.3.9 We were not present at the completion of the new constitution; but before we left the convention, its principles were so well established as to convince us, that no alteration was to be expected to conform it to our ideas of expediency and safety. A persuasion, that our further attendance would be fruitless, and unavailing, rendered us less solicitous to return.

We have thus explained our motives for opposing the adoption of the national constitution, which we conceived it our duty to communicate to your Excellency, to be submitted to the consideration of the honorable legislature.

We have the honor to be,
With the greatest respect,
Your Excellency's
Most obedient, and
Very humble servant,
Robert Yates,
John Lansing, jun.

His Excellency Governor Clinton.

The Genuine Information Delivered to the Legislature of the State of Maryland Relative to the Proceedings of the General Convention Lately Held at Philadelphia; By Luther Martin, Esquire

Together with a Letter to the Hon. Thomas C. Deye and An Address to the Citizens of the United States

1788

No student of the Anti-Federalists can fail to sympathize with William Pierce's characterization of Luther Martin as possessing "a good deal of information" (and, it may be added, argument), but at the same time "so extremely prolix, that he never speaks without tiring the patience of all who hear him."[1] Slovenly, often drunk and in debt, Martin had neither the personal characteristics nor the background that might seem necessary for success in aristocratic Maryland. Yet he became a lawyer, and long-term attorney general of Maryland, widely respected and feared.[2] Chief Justice Roger Taney regarded him as "a profound lawyer," whose defects "arise in some measure from the fulness of his legal knowledge"; he "never missed the strong points of his case; and although much might generally have been better omitted, everybody who listened to him would agree that nothing could be added. . . ."[3]

In addition to his Genuine Information, reproduced here, Martin wrote a number of letters during the early part of 1788 in reply to Oliver Ellsworth's The Landowner, in defense of his and Elbridge Gerry's activities in the Convention, and in criticism of the Constitution.[4] Although helpful to the student of the Convention, the letters add little or nothing to the argument of the Genuine Information and are not printed here except for two or three points included in the notes. The Genuine Information is an expanded ver-

sion of remarks made by Martin to the Maryland legislature, to which he reported, by invitation, on 29 November 1787.[5] It was first printed in the *Maryland Gazette* and *Baltimore Advertiser* beginning 28 December 1787.[6] It was then published in 1788 as a pamphlet, from which it is reprinted here,[7] and was later included with Robert Yates' Secret Proceedings of the Convention Debates, first published in 1821. Widely read and commented on at the time, the Genuine Information is a major source of Anti-Federalist thought and of information about the Convention.

The first third of the Genuine Information (2.4.5–37) presents a description of the proceedings of the Philadelphia Convention from the introduction of the Virginia Resolutions to the adoption of the "Great Compromise" settling the mode of representation in the legislature. In the course of this description, Martin presents what is perhaps the most comprehensive and persuasive argument that exists in favor of equality of representation of the states (2.4.29–34).[8] In this section Martin presents his well-known analysis of the three major parties in the Convention—those who wished to annihilate all state governments and to establish a national monarchy, those who wished merely to establish a system that would give their own states predominance, and those whose objects were truly federal and republican—and the combination of the first two against the third to defeat the New Jersey resolutions (2.4.23–28).

Following this historical account, Martin turns to a systematic treatment of the Constitution. He is still largely concerned with the question of equal representation and the departure of the Constitution from the true principles of federalism. Indeed, Martin's Information is distinguished by its preoccupation with these themes. Many of the small states' representatives who made the arguments in Philadelphia that Martin emphasizes here became enthusiastic proponents of the Constitution once they had achieved the best representation they could get. The typical opposition to the Constitution was at least as much concerned with the powers and structure of the general government and the absence of a bill of rights as with the failure of the new Constitution to preserve the principles of true federalism.[9] Thus Martin was, in one sense, something of an anachronism among Anti-Federalists; but he was, in another sense, a truer Anti-Federalist, because a truer federalist, than many of his allies.

What follows is an extended table of contents of this part of Martin's argument.

Examination of the System Proposed (2.4.38–118)

I. Article I—Legislature (2.4.38–79)

A. Sec. 1—A Congress to consist of two branches (2.4.38–44).

1. Two branches of the legislature are proper in the case of a single state but unnecessary and improper in a federal government (2.4.38).

2. This system is not a federal but a national government (2.4.39–41).
3. Senate as constituted is no security for the states (2.4.42–43).
4. Republics, which are best calculated to preserve freedom and happiness of citizens, must be confined to a small territory, connected together, where necessary, by a strong federal government (2.4.44).

B. Sec. 2—Apportionment of representation and direct taxation (2.4.45).
   1. Objections to counting slaves in apportioning representation.
   2. The initial representation of large states is "artfully lessened" to conceal the undue influence they will have when the subsequent apportionment is made.
   3. The natural weight and influence and the greater ease of combining of the large states give them an even stronger position than their proportion of representation would suggest, and the small states a relatively weaker position.
   4. Since inhabitants of commercial states will pay most of the duty on imports, it is unjust that they should pay also same proportion of direct tax as others.

C. Sec. 6—The prohibition on members of Congress holding federal office should be extended (2.4.46–48).

D. Sec. 7
   1. Revenue bills. It is wrong to confine origination of revenue bills to House of Representatives; House of Lords analogy does not apply; the Senate will be the most experienced, select body, but will be rendered almost useless (2.4.49–52).
   2. Presidential negative is unnecessary and improper (2.4.53–54).

E. Sec. 8—Powers of Congress (2.4.55–62).
   1. Power to tax. General government given power to drain country by all means, including stamp duties. Federal government ought not to have power to lay direct taxes except in cases of state delinquency (2.4.55–56).
   2. Power to borrow money. Clause permitting emission of bills of credit eliminated, over opposition of Martin and friends, out of excessive fear of paper money (2.4.57).
   3. Power to constitute inferior federal courts. There is no need for such bodies, which would increase federal influence and tend to undermine the state judiciaries (2.4.58).
   4. Military power. Congressional powers to raise and support armies, call forth militia, are dangerous and unlimited, tend to introduce arbitrary power, and are aimed at the destruction of the states (2.4.59–62).

F. Sec. 9—Restrictions (2.4.63–74).
   1. "the importation of such persons." By avoiding the odious expression "slaves," the clause permits Congress to impose duties on every foreigner who comes here. Description of slave trade/navigation act compromise. Lengthy account of strong anti-slavery arguments (2.4.63–71).
   2. Suspension of writ of habeas corpus. Not necessary, as states have this power; federal government could use it to send advocates of freedom to distant states (2.4.72).
   3. No preference to be given to ports of one state, and vessels bound from one state not to be obliged to clear in another. Purpose of this destroyed by power of general government to establish whatever ports of entry it chooses (2.4.73–74).

G. Sec. 10—Restrictions on states (2.4.75–79).
   1. States prohibited from issuing bills of credit. Should not totally prohibit paper money, which may sometimes be necessary (2.4.75).
   2. States prohibited from making anything but gold and silver legal tender or passing laws impairing contracts. There may be times of great distress when these would be necessary (2.4.76–78).
   3. States prohibited from laying imposts without permission of general government. Should leave them at least duties on exports; also state duties on imports might sometimes be necessary (2.4.79).

II. Article II—Executive (2.4.80–88)

A. Election and tenure.
   1. Disagreement in Convention between those who favored limited duration and rotation and those who favored appointment during good behavior (2.4.81–82).
   2. After repeated failures, the latter party succeeded in making President reeligible and in instituting present mode of election which gives undue influence to large states (2.4.82–83).

B. Vice President will come from a large state which will thus have undue influence (2.4.84).

C. Presidential powers. Make President a king in all but name (2.4.85–86).

D. Impeachment (2.4.87–88).
   This provision gives only an appearance of responsibility—unlikely that President will ever be impeached or, if impeached, found guilty or, if found guilty, removed from office.

III. Article III—Judiciary (2.4.89–98)

A. Jurisdiction. Federal judiciary will have exclusive right to decide all questions within its jurisdiction (2.4.89–91).

B. Jury trial. Not provided for in civil cases; taken away even in crimi-

nal cases by provision for appeal to Supreme Court on questions of law and fact (2.4.92–94).

C. Treason against the United States. This provision may put the citizen in peril of committing treason against either the state or the federal government (2.4.95–98).

IV. Miscellaneous provisions (2.4.99–112)

A. Article IV, sec. 3—No creation of new states within the jurisdiction of existing state without the consent of that state (2.4.99–107).

1. This is contrary to every principle of justice and sound policy, which require dismemberment of large states and maintenance of states of moderate size (2.4.100–103).
2. The large states cannot use the argument that free and independent states ought not to be dismembered without their consent, having abandoned this ground in forcing the small states to give up their equality (2.4.104–5).
3. As the Constitution protects the large states from the natural disintegrative tendencies of their size, so it ought to permit Congress to divide them where appropriate (2.4.106).
4. Much of the land claimed by states was acquired by the common blood and treasure and ought to be part of the common stock (2.4.107).

B. Article VI—Absence of religious test (2.4.108). Some distinction at least should have been made between Christianity and infidelity or paganism.

C. Article VII—Ratification by nine states (2.4.109–12). While majority must rule in ordinary circumstances, unanimous consent is required for framing and dissolving a constitution. There can be no alteration of the Articles of Confederation without unanimous consent of state legislatures; only states are entitled to agree to alterations of a federal government.

V. Conclusion regarding Martin's own part in the Convention and his opposition to the Constitution (2.4.113–18)

1. Farrand III, 93.
2. See Henry P. Goddard, *Luther Martin: The Federal Bull Dog* (Baltimore 1887). Altogether appropriately, Martin was counsel for the state of Maryland in *McCulloch v. Maryland*, 4 Wheat. 316 (1819).
3. Samuel Tyler, *Memoir of Roger Brooke Taney* (Baltimore 1872) 66–67.
4. These are reprinted in Ford, *Essays* 341–83, and, in somewhat abridged form, in Farrand III, 276–95.
5. A reprint of the manuscript copy of the speech as taken down by the clerk of the Maryland House of Representatives can be found in Farrand III, 151–59.
6. This version is printed in Farrand III, 172–232.
7. The original pamphlet included a letter to the Speaker of the Maryland House of Delegates vindicating Martin's report of the conduct of Messrs. Yates and Lansing at

Philadelphia, which adds nothing to their own account and is omitted here. For other material in the original pamphlet, see below, 2.4.115 n. 45.

8. See also Martin's discussion of ratification, 2.4.39–44.

9. Martin touches on these more usual Anti-Federalist concerns in his later letters. On the Bill of Rights, he wrote on 21 March 1788: "With respect to a bill of rights, had the government been formed upon principles truly federal, as I wished it, legislating over and acting upon the states only in their collective or political capacity, and not on individuals, there would have been no need of a bill of rights, as far as related to the rights of individuals, but only as to the rights of states. But the proposed constitution being intended and empowered to act not only on states, but also immediately on individuals, it renders a recognition and a stipulation in favour of the rights both of states and of men, not only proper, but in my opinion absolutely necessary." Ford, *Essays* 364–65. And on the extensive powers of the federal government, he wrote on 4 April 1788: "If those, my fellow citizens, to whom the administration of our government was about to be committed, had sufficient wisdom never to err, and sufficient goodness always to consult the true interest of the governed, and if we could have a proper security that their successors should to the end of time be possessed of the same qualifications, it would be impossible that power could be lavished upon them with too liberal a hand. Power absolute and unlimited, united with unerring wisdom and unbounded goodness, is the government of the Deity of the universe. But remember, my fellow citizens, that the persons to whom you are about to delegate authority are and will be weak, erring mortals, subject to the same passions, prejudices and infirmities with yourselves; and let it be deeply engraven on your hearts, that from the first history of government to the present time, if we begin with Nimrod and trace down the rulers of nations to those who are now invested with supreme power, we shall find few, very few, who have made the beneficent Governor of the universe the model of their conduct, while many are they who, on the contrary, have imitated the demons of the darkness. We have no right to expect that our rulers will be more wise, more virtuous, or more perfect than those of other nations have been, or that they will not be equally under the influence of ambition, avarice and all that train of baleful passions, which have so generally proved the curse of our unhappy race. We must consider mankind such as they really are,—such as experience has shown them to be heretofore, and bids us expect to find them hereafter,—and not suffer ourselves to be misled by interested deceivers or enthusiastick visionaries; and therefore in forming a system of government, to delegate no greater power than is clearly and certainly necessary, ought to be the first principle with every people who are influenced by reason and a regard for their safety, and in doing this, they ought most solicitously to endeavour so to qualify even that power, by such checks and restraints, as to produce a perfect responsibility in those who are to exercise it, and prevent them from its abuse with a chance of impunity;—since such is the nature of man, that he has a propensity to abuse authority and to tyrannize over the rights of his fellowmen; and to whomsoever power is given, not content with the actual deposit, they will ever strive to obtain an increase." Ford, *Essays* 378–79. Cf. volume 1 above, chapter 8.

To the Honorable Thomas Cockey Deye, Speaker of the House of Delegates of Maryland.

Sir,

2.4.1 I flatter myself the subject of this letter will be a sufficient apology for thus publicly addressing it to you, and through you to the other members of the house of delegates. It cannot have escaped your or their recollection, that

when called upon as the servant of a free State, to render an account of those transactions in which I had had a share, in consequence of the trust reposed in me by that State, among other things, I informed them, "that some time in July, the Honorable Mr. Yates and Mr. Lansing of New-York, left the convention; that they had uniformly opposed the system, and that I believe, despairing of getting a proper one brought forward, or of rendering any real service, they returned no more." You cannot, Sir, have forgot, for the incident was too remarkable not to have made some impression, that upon my giving this information, the zeal of one of my honorable colleagues, in favour of a system which I thought it my duty to oppose, impelled him to interrupt me, and in a manner which I am confident his zeal alone, prevented him from being convinced was not the most delicate, to insinuate pretty strongly, that the statement which I had given of the conduct of those gentlemen, and their motives for not returning were not candid.

Those honorable members have officially given information on this subject, by a joint letter to his Excellency Governor Clinton—it is published.—Indulge me, Sir, in giving an extract from it, that it may stand contrasted in the same page with the information I gave, and may convict me of the want of candor of which I was charged, if the charge was just—if it will not do that, then let it silence my accusers. 2.4.2

"Thus circumstanced, under these impressions, to have hesitated would have been to be culpable;—we therefore gave the principles of the constitution, which has received the sanction of a majority of the convention, our decided and unreserved dissent. We were not present at the completion of the new constitution: but before we left the convention, its principles were so well established as to convince us, that no alteration was to be expected to conform it to our ideas of expediency and safety. A persuasion that our further attendance would be fruitless and unavailing rendered us less solicitous to return." 2.4.3

These, Sir, are their words; on this I shall make no comment; I wish not to wound the feelings of any person, I only wish to convince. 2.4.4

I have the honor to remain,
With the utmost respect,
Your very obedient servant,
Luther Martin.

Baltimore, January 27, 1788.

To the Citizens of the United States.

The following sheets contain the information given by me to the legislature of Maryland, when officially called before them for that purpose:—No 2.4.5

friend to his country will think that they require an apology; I should have been unworthy the trust reposed in me, and guilty of the blackest ingratitude to a State, which has given me the most distinguishing marks of its confidence, had I not been explicit.—No *fact* has been intentionally misstated by me, I aimed to be perfectly correct; and, though in some measure obliged to depend on my memory, I believe I have in no instance, given malice an opportunity to charge me with misrepresentation. No writer, with his name, has denied the information to be just—I think they never will—though we differ in politics, should it be necessary, there are men of honor who were in the convention, who are ready to decide in my favour; and I can, with confidence, appeal to a *Washington*, a *Franklin*, and other respectable members of the convention, for the veracity of my information. Few, very few, even of the *anonymous* publications have *insinuated* the information to be in any respect uncandid; and those few have confined themselves to generals, without daring to descend to particulars.—The lowest *scurrility* in the form of *Extracts of letters*, coined at the mint of meanness and falsehood, I have experienced; it is what I expected; I know myself, and I am known by others, to be infinitely above them, and have read them with a smile of contempt.—Me they *cannot* injure;—but they disgrace their authors, and the cause in which they are engaged.—This is a trifling sacrifice—In the cause of freedom, were it necessary, I am ready to make a much greater.[1]

2.4.6 As far as I have expressed my opinions of the views of the framers of the constitution, I have followed the fullest conviction of my mind, founded on my own observations made on their conduct while in convention, and confirmed by the conduct of the friends of the system since that time.—They were my sentiments while there; I at that time expressed them freely, and then found many who perfectly corresponded with me in sentiment, although some of them may not now choose to avow it, or, no doubt from a conviction of their error, may now advocate the system they there condemned and opposed. But as to myself, so far from having any reason to change the opinion I there formed, every circumstance which has since taken place has confirmed it.

2.4.7 The conduct adopted by the convention, rendered the dissemination of these sheets the more necessary: Could there possibly be a greater indignity and insult offered to the majesty of the free States, and the free citizens of America, than for the very men who were entrusted with powers for the preservation and security of their rights, and for the establishment of a permanent system to promote their happiness, to make use of that power to destroy both the one and the other?—For this purpose, in time of profound peace, to shut themselves up in mystery and darkness; to keep all their deliberations an absolute secret from their constituents, who were to be affected thereby; to prevent the publication of their journals; to deprive the free citizens of America of every means of information: to attempt to pass

upon them, as meeting with their unanimous approbation, that which did not in reality meet with the perfect approbation of perhaps one individual in the convention; to give you no other alternative but to accept of it as proposed, without alteration, or to reject it entirely, while at the same time some of them were resounding, from one end of the continent to the other, the necessity of its acceptance, and that none but the enemies of their country would reject it—And to abuse your confidence in them, by endeavouring to hurry you into a hasty adoption, under that delusion, before you could obtain information, and be able to form a proper judgement for yourselves.

Such a conduct in any other country, or even in this, at any other time, would have drawn down upon them the indignation and resentment of those who were thus attempted to be abused and enslaved. 2.4.8

To counteract the views of ambition and interest has been my aim—To this I devoted every effort while in convention—The same motives have directed my conduct since—Should my exertions in the smallest degree assist in effecting the rejection of this detestable system of slavery, I shall enjoy the highest possible gratification, that of rendering my country an essential benefit. 2.4.9

But should the system be adopted, I shall even then enjoy the highest possible consolation which a good citizen can enjoy in the public calamity, that of having conscientiously discharged my duty to my country, by endeavouring to avert it. 2.4.10

Luther Martin.

Baltimore, March 30, 1788.

Mr. Martin's Information to the General Assembly of the State of Maryland.

Mr. Martin, when called upon, addressed the House nearly as follows:

Since I was notified of the resolve of this Honourable House, that we should attend this day, to give information with regard to the proceedings of the late convention, my time has necessarily been taken up with business, and I have also been obliged to make a journey to the Eastern Shore: These circumstances have prevented me from being as well prepared as I could wish, to give the information required—However, the few leisure moments I could spare, I have devoted to refreshing my memory, by looking over the papers and notes in my possession; and shall with pleasure, to the best of my abilities, render an account of my conduct. 2.4.11

It was not in my power to attend the convention immediately on my appointment—I took my seat, I believe, about the 8th or 9th of June. I found that Governor Randolph, of Virginia, had laid before the convention certain 2.4.12

propositions for their consideration, which have been read to this House by my honourable colleague,[2] and I believe, he has very faithfully detailed the substance of the speech with which the business of the convention was opened, for though I was not there at the time, I saw notes which had been taken of it.

2.4.13 The members of the convention from the States, came there under different powers; the greatest number, I believe, under powers nearly the same, as those of the delegates of this State—Some came to the convention under the former appointment, authorising the meeting of delegates merely to regulate trade.—Those of Delaware were *expressly instructed to agree to no system which should take away from the States, that equality of suffrage secured by the original articles of confederation.* Before I arrived, a number of rules had been adopted to regulate the proceedings of the convention, by one of which, seven States might proceed to business, and consequently four States the majority of that number, might eventually have agreed upon a system which was to affect the whole union. By another, *the doors were to be shut*, and *the whole proceedings were to be kept secret;* and so far did this rule extend, that we were thereby prevented from corresponding with gentlemen in the different States upon the subjects under our discussion—a circumstance, Sir, which I confess I greatly regretted—I had no idea, that all the wisdom, integrity, and virtue of this State, or of the others, were centered in the convention—I wished to have corresponded freely, and confidentially, with eminent political characters in my own, and other States, not implicitly to be dictated to by them, but to give their sentiments due weight and consideration. So *extremely solicitous* were they, that their proceedings should not transpire, that *the members were prohibited even from taking copies of resolutions, on which the convention were deliberating, or extracts of any kind from the journals without formally moving for, and obtaining permission, by a vote of the convention for that purpose.*

2.4.14 You have heard, Sir, the resolutions which were brought forward by the honourable member from Virginia; let me call the attention of this House to the conduct of Virginia, when our confederation was entered into—that State then proposed, and obstinately contended, *contrary to the sense of, and unsupported by the other States, for an inequality of suffrage* founded on *numbers, or some such scale*, which should give *her*, and certain other States, *influence in the Union over the rest;* pursuant to that spirit which then characterized her, and uniform in her conduct, the very second resolve, is calculated expressly for that purpose *to give her a representation proportioned to her numbers*, as if the *want of that* was *the principle defect* in our original system, and this alteration the great means of remedying the evils we had experienced under our present government.

2.4.15 The object of *Virginia*, and *other large States, to encrease their power and influence over the others*, did not escape observation: the subject, however, was discussed with great coolness in the committee of the whole

House (for the convention had resolved itself into a committee of the whole to deliberate upon the propositions delivered in by the honourable member from Virginia). Hopes were formed, that the farther we proceeded in the examination of the resolutions, the better the House might be satisfied of the impropriety of adopting them, and that they would finally be rejected by a majority of the committee; if on the contrary, a majority should report in their favour, it was considered, that it would not preclude the members from bringing forward and submitting any other system to the consideration of the convention; and accordingly, while those resolves were the subject of discussion in the committee of the whole House, a number of the members who disapproved them, were preparing *another system*, such as *they thought more conducive to the happiness and welfare of the States*—The propositions originally submitted to the convention having been debated, and undergone a variety of alterations in the course of our proceedings, the committee of the whole House by a *small majority* agreed to a *report*, which I am happy, Sir, to have in my power to lay before you; it was as follows:[3]

1. *Resolved*, That it is the opinion of this committee, that a *national* government ought to be established, consisting of a supreme, legislative, judiciary and executive. 2.4.16

2. That the legislative ought to consist of *two branches*.

3. That the members of the first branch of the national legislature ought to be elected by the people of the several States, for the term of three years, to receive fixed stipends, by which they may be compensated for the devotion of their time to public service, to be paid out of the national treasury, to be ineligible to any office established by a particular State, or under the authority of the United States, except those particularly belonging to the functions of the first branch, during the term of service, and under the national government, for the space of one year after its expiration.

4. That the members of the second branch of the legislature ought to be chosen by the individual legislatures, to be of the age of thirty years at least, to hold their offices for a term sufficient to ensure their independency, namely, seven years, one third to go out biennially, to receive fixed stipends, by which they may be compensated for the devotion of their time to public service, to be paid out of the national treasury, to be ineligible to any office by a particular State, or under the authority of the United States, except those peculiarly belonging to the functions of the second branch, during the term of service, and under the national government, for the space of one year after its expiration.

5. That each branch ought to possess the right of originating acts.

6. That the national legislature ought to be empowered to enjoy the legislative rights vested in Congress by the confederation, and *moreover to legislate in all cases to which the separate States are incompetent*, or in which the *harmony of the United States may be interrupted, by the exercise of individual legislation;* to *negative* all laws passed by the *several States*,

contravening, in the *opinion* of the *legislature* of the *United States*, the articles of union, or any treaties subsisting under the authority of the Union.

7. That the *right of suffrage* in the *first* branch of the national legislature, *ought not to be according to the rule established in the articles of confederation*, but according to some equitable rate of representation, namely, *in proportion to the whole number of white, and other free citizens and inhabitants of every age, sex and condition, including those bound to servitude for a term of years, and three-fifths of all other persons*, not comprehended in the foregoing description, except Indians not paying taxes in each State.

8. That the *right of suffrage* in the *second branch* of the national legislature, *ought to be according to the rule established in the first*.

9. That a national executive be instituted to consist of a single person, *to be chosen by the national legislature* for the term of seven years, with power to carry into execution the national laws, *to appoint to offices* in cases not otherwise provided for, to be ineligible a second time, and to be removeable on impeachment and conviction of malpractice or neglect of duty, to receive a fixed stipend, by which he may be compensated for the devotion of his time to public service—to be paid out of the national treasury.

10. That the national executive shall have a right to *negative any legislative act which shall not afterwards be passed, unless by two third parts of each branch of the national legislature*.

11. That a national judiciary be established, to consist of one supreme tribunal, the Judges of which, to be appointed by the *second branch* of the national legislature, to hold their offices during good behaviour, and to receive punctually, at stated times, a fixed compensation for their services, in which no increase or diminution shall be made, so as to affect the persons actually in office at the time of such increase or diminution.

12. That the *national legislature* be empowered to appoint *inferior tribunals*.

13. That the jurisdiction of the *national* judiciary shall extend to cases which respect the collection of the national revenue; cases arising under the laws of the United States, impeachments of any national officer, *and questions which involve the national peace and harmony*.

14. *Resolved*, That provision ought to be made for the admission of States lawfully arising within the limits of the United States, whether from a voluntary junction of government, territory, or otherwise, with the consent of a number of voices in the national legislature less than the whole.

15. *Resolved*, That provision ought to be made for the continuance of Congress, and their authority and privileges, until a given day after the reform of the articles of union shall be adopted, and for the completion of all their engagements.

16. That a republican constitution and its existing laws ought to be guaranteed to each State by the United States.

17. That provision ought to be made for the amendment of the articles of union, whensoever it shall seem necessary.

18. That the legislative, executive and judiciary powers, within the several States, ought to be bound by oath to support the articles of the union.

19. That the amendments which shall be offered to the confederation by this convention, ought, at a proper time or times, after the approbation of Congress, to be submitted to an assembly or assemblies, recommended by the legislatures, to be expressly chosen by the people to consider and decide thereon.

These propositions, Sir, were *acceded to* by a *majority of the members of the committee*—a system by which the *large States were to have not only an inequality of suffrage in the first branch*, but also *the same inequality* in the *second branch*, or senate; however, it was not designed the second branch should consist of the same *number* as the first. It was proposed that the senate should consist of *twenty-eight members*, formed on the following scale—Virginia to send *five*, Pennsylvania and Massachusetts each *four*, South-Carolina, North-Carolina, Maryland, New-York, and Connecticut *two* each, and the States of New-Hampshire, Rhode-Island, Jersey, Delaware, and Georgia each of them *one;* upon this plan, the three large States, Virginia, Pennsylvania and Massachusetts, would have *thirteen* senators out of *twenty-eight*, almost *one half of the whole number*—Fifteen senators were to be a quorum to proceed to business; those *three States* would, therefore, have *thirteen* out of that quorum. Having this inequality *in each branch* of the legislature, it must be evident, Sir, that *they would make what laws they pleased, however injurious or disagreeable to the other States*, and that *they would always prevent the other States from making any laws, however necessary and proper, if not agreeable to the views of those three States*—They were not only, Sir, by this system, to have such an undue superiority in making laws and regulations for the Union, but to have the same superiority in the *appointment* of the *President*, the *Judges*, and all *other officers* of government. Hence, these three States, would in reality have the appointment of the President, Judges, and all the other officers. This President, and these Judges, so appointed, we may be morally certain, would be citizens of one of those three States; and the President, as appointed by them, and a citizen of one of them, would espouse their interests and their views, when they came in competition with the views and interests of the other States. This President, so appointed by the three large States, and so unduly under their influence, was to have a negative upon every law that should be passed, which, if negatived by him, was not to take effect, unless assented to by two-thirds of each branch of the legislature, a provision which deprived ten States of even the faintest shadow of liberty; for if

2.4.17

they, by a miraculous unanimity, having all their members present, should outvote the other three, and pass a law contrary to their wishes, those three large States need only procure the President to negative it, and thereby prevent a possibility of its ever taking effect, because the representatives of those three States would amount to much more than one third (almost one half) of the representatives in each branch. And, Sir, this government, so organized with all this undue superiority in those three large States, was as you see to have a power of negativing the laws passed by every state legislature in the Union. Whether, therefore, laws passed by the legislature of Maryland, New-York, Connecticut, Georgia, or of any other of the ten States, for the regulation of their internal police, should take effect, and be carried into execution, was to depend on the good pleasure of the representatives of Virginia, Pennsylvania, and Massachusetts.

2.4.18 This system of slavery, which bound hand and foot ten States in the Union, and placed them at the mercy of the other three, and under the most abject and servile subjection to them, was approved by a majority of the members of the convention, and reported by the committee.

2.4.19 On this occasion, the House will recollect, that the convention was resolved into a committee of the whole—of this committee Mr. Gorham was chairman—The honorable Mr. Washington was then on the floor, in the same situation with the other members of the convention, at large to oppose any system he thought injurious, or to propose any alterations or amendments he thought beneficial, to these propositions so reported by the committee, no opposition was given by that illustrious personage, or by the President of the State of Pennsylvania. They both appeared cordially to approve them, and to give them their hearty concurrence; yet this system, I am confident, Mr. Speaker, there is not a member in this House would advocate, or who would hesitate one moment in saying it ought to be rejected. I mention this circumstance in compliance with the duty I owe this honorable body, not with a view to lessen those exalted characters, but to shew how far the greatest and best of men may be led to adopt very improper measures, through error in judgment, state influence, or by other causes, and to shew that it is our duty not to suffer our eyes to be so far dazzled by the splendor of names, as to run blindfolded into what may be our destruction.

2.4.20 Mr. Speaker, I revere those illustrious personages as much as any man here. No man has a higher sense of the important services they have rendered this country. No member of the convention went there more disposed to pay a deference to their opinions: but I should little have deserved the trust this State reposed in me, if I could have sacrificed its dearest interests to my complaisance for their sentiments.

2.4.21 When contrary to our hopes it was found, that a majority of the members of the convention had in the committee agreed to the system, I have laid before you, we then thought it necessary to bring forward the propositions,

which such of us who disapproved the plan before had prepared—The members who had prepared these resolutions were principally of the Connecticut, New-York, Jersey, Delaware, and Maryland delegations. The honorable Mr. Patterson, of the Jerseys, laid them before the convention; of these propositions I am in possession of a copy, which I shall beg leave to read to you.

2.4.22 These propositions were referred to a committee of the whole House: unfortunately the New-Hampshire delegation had not yet arrived, and the sickness of a relation of the honorable Mr. M'Henry, obliged him still to be absent, a circumstance, Sir, which I considered much to be regretted, as Maryland thereby was represented by only two delegates, and they unhappily differed very widely in their sentiments.

2.4.23 The result of the reference of these last propositions to a committee, was a speedy and hasty determination to reject them—I doubt not, Sir, to those who consider them with attention, so sudden a rejection will appear surprising; but it may be proper to inform you, that on our meeting in convention, it was soon found there was among us three parties of very different sentiments and views.

2.4.24 One party, whose object and wish it was to abolish and annihilate all State governments, and to bring forward one general government over this extensive continent, of a monarchical nature, under certain restrictions and limitations: Those who openly avowed this sentiment were, it is true, but few, yet it is equally true, Sir, that there was a considerable number who did not openly avow it, who were by myself, and many others of the convention, considered as being in reality favourers of that sentiment, and acting upon those principles, covertly endeavouring to carry into effect what they well knew openly and avowedly could not be accomplished.

2.4.25 The second party was not for the abolition of the State governments, nor for the introduction of a monarchical government under any form; but they wished to establish such a system as could give their own States undue power and influence in the government over the other States.

2.4.26 A third party was what I considered truly federal and republican; this party was nearly equal in number with the other two, and were composed of the delegations from Connecticut, New-York, New-Jersey, Delaware, and in part from Maryland; also of some individuals from other representations.—This party, Sir, were for proceeding upon terms of *federal equality;* they were for taking our present *federal system* as the basis of their proceedings, and as far as experience had shewn us that there were defects, to remedy those defects, as far as experience had shewn that other powers were necessary to the federal government, to give those powers—They considered this the object for which they were sent by their States, and what their States expected from them; they urged, that if after doing this, experience should shew that there still were defects in the system (as no doubt there would be) the same good sense that induced this convention to be

called, would cause the States when they found it necessary to call another; and if that convention should act with the same moderation, the members of it would proceed to correct such errors and defects as experience should have brought to light—That by proceeding in this train, we should have a prospect at length of obtaining as perfect a system of federal government, as the nature of things would admit. On the other hand, if we, contrary to the purpose for which we were entrusted, considering ourselves as master-builders, too proud to amend our original government, should demolish it entirely, and erect a new system of our own, a short time might shew the new system as defective as the old, perhaps more so: should a convention be found necessary again, if the members thereof acting upon the same principles, instead of amending and correcting its defects, should demolish that entirely, and bring forward a third system that also might soon be found no better than either of the former, and thus we might always remain young in government, and always suffering the inconveniencies of an incorrect, imperfect system.

2.4.27 But, Sir, the favourers of monarchy, and those who wished the total abolition of State governments, well knowing that a government founded on *truly federal principles*, the basis of which were the *Thirteen State governments, preserved in full force and energy*, would be destructive of their views; and knowing they were too weak in numbers, openly to bring forward their system, conscious also that the people of America would reject it if proposed to them, joined their interest with that party, who wished a system, giving *particular States* the *power* and *influence over the others*, procuring in return mutual sacrifices from them, in giving the government *great* and *undefined powers* as to its *legislative* and *executive*, well knowing that by *departing from a federal system*, they paved the way for their favourite object, the *destruction of the State governments*, and the *introduction of monarchy*—And hence, Mr. Speaker, I apprehend, in a great measure, arose the objections of those honorable members, Mr. Mason and Mr. Gerry. In every thing that tended to give the *large States power* over the *smaller*, the *first* of those gentlemen could not forget he belonged to the *ancient dominion*, nor could the *latter* forget that he represented Old Massachusetts; that part of the system which tended to give those States power over the others met with their *perfect approbation;* but when they viewed it charged with *such powers* as *would destroy all State Governments*, their *own* as well as the *rest*—when they saw a President so constituted as to differ from a monarch, scarcely but in name, and having it in his power to become such in reality when he pleased; they being *republicans* and *federalists* as far as an attachment to their own States would permit them, they warmly and zealously opposed those parts of the system. From these different sentiments, and from this combination of interest, *I apprehend*, Sir, proceeded the fate of what was called the Jersey resolutions, and the report made by the committee of the whole House.

2.4.28 The Jersey propositions being thus rejected, the convention took up those reported by the committee, and proceeded to debate them by paragraphs; it was now that they who disapproved the report found it necessary to make a *warm* and *decided opposition*, which took place upon the discussion of the seventh resolution, which related to the *inequality* of representation in the *first* branch.[4] Those who advocated this inequality, urged, that when the articles of confederation were formed, it was *only* from *necessity* and *expediency* that the States were admitted *each* to have an *equal vote;* but that our situation was *now altered*, and therefore those States who considered it contrary to their interest, would *no longer abide* by it. They said no State ought to wish to have influence in government, except in proportion to what it contributes to it; that if it contributes but little, it ought to have but a small vote; that taxation and representation ought always to go together; that if one State had *sixteen times as many inhabitants* as another, or was *sixteen times as wealthy*, it ought to have *sixteen times as many votes;* that an inhabitant of Pennsylvania ought to have as much weight and consequence as an inhabitant of Jersey or Delaware; that it was contrary to the feelings of the human mind; what the *large States* would *never* submit to; that the *large States* would have *great objects* in view, in which they would never permit the *smaller States* to thwart them; that *equality of suffrage* was the rotten part of the constitution, and that this was a happy time to get clear of it. In fine, that it was the poison which contaminated our whole system, and the source of all the evils we experienced.

2.4.29 This, Sir, is the substance of the arguments, if arguments they may be called, which were used in favour of *inequality of suffrage*.—Those who advocated the *equality of suffrage*, took the matter up on the original principles of government; they urged, that all men considered in a state of nature, before any government formed, are equally free and independent, no one having any right or authority to exercise power over another, and this *without any regard to difference in personal strength, understanding, or wealth*—That when such individuals enter into government, they have *each* a *right* to an *equal voice* in its first formation, and afterwards have *each* a right to an *equal vote* in every matter which relates to their government—That if it could be done conveniently, they have a right to exercise it in person—Where it cannot be done in person but for convenience, representatives are appointed to act for them, *every person* has a *right* to an *equal vote*, in choosing that representative who is entrusted to do for the whole, that which the whole, if they could assemble, might do in person, and in the transacting of which each would have an equal voice—That if we were to admit, because a man was *more wise, more strong*, or *more wealthy*, he should be entitled to *more votes* than another, it would be *inconsistent with the freedom and liberty of that other*, and would reduce him to *slavery*—Suppose, for instance, ten individuals in a state of nature, about to enter into government, *nine* of whom are *equally wise, equally strong, and equally*

wealthy, the *tenth* is *ten times as wise, ten times as strong*, or *ten times as rich;* if for this reason he is to have *ten votes* for *each vote of either of the others*, the *nine* might as well *have no vote at all*, since though the *whole nine* might assent to a measure, yet the *vote* of the *tenth* would *countervail*, and *set aside all their votes*—If this *tenth* approved of what *they* wished to adopt, it would be well, but if he disapproved, he could prevent it, and in the same manner he could carry into execution *any measure he wished, contrary to the opinion of all the others, he* having *ten votes*, and the *other* altogether but *nine*—It is evident that on these principles, *the nine* would have *no will nor discretion of their own*, but must be *totally dependent* on the *will* and *discretion* of the *tenth*, to *him they* would be as *absolutely slaves* as *any negro* is to his *master*—If *he* did not attempt to carry into execution any measures injurious to the *other nine*, it could only be said that they had a *good master*, they would not be the *less slaves*, because *they* would be *totally dependent* on the *will of another*, and not on *their own will*—They might not *feel their chains*, but they would notwithstanding *wear them*, and whenever their *master* pleased he might draw them so tight as to gall them to the bone. Hence it was urged the *inequality of representation*, or giving to one man more votes than another on account of his wealth, etc. was *altogether inconsistent with the principles of liberty*, and in the *same proportion as it should be adopted*, in favour of *one* or *more*, in *that proportion are the others inslaved*—It was urged, that though every individual should have an equal voice in the government, yet, even the superior wealth, strength, or understanding, would give great and undue advantages to those who possessed them. That wealth attracts respect and attention; superior strength would cause the weaker and more feeble to be cautious how they offended, and to put up with small injuries rather than to engage in an unequal contest—In like manner superior understanding would give its possessor many opportunities of profiting at the expence of the more ignorant. Having thus established these principles with respect to the *rights* of *individuals* in a *state of nature*, and what is due to *each* on entering into government, principles established by every writer on liberty, they proceeded to shew that *States*, when *once formed*, are considered *with respect* to *each other* as *individuals* in a state of nature; that, like individuals, each *State* is considered *equally free* and *equally independent*, the *one* having no right to exercise authority over the *other*, though *more strong, more wealthy*, or *abounding with more inhabitants*—That when a number of *States* unite themselves under a *federal government*, the *same principles apply* to *them* as when a *number* of *individual men* unite themselves under a *State government*[5]—That every argument which shews *one man* ought not to have *more votes* than *another*, because he is *wiser, stronger* or *wealthier*, proves that *one State* ought not to have *more votes* than *another*, because it is *stronger, richer*, or *more populous*—And that by *giving one State*, or *one or two States more votes* than the *others*, the *others* thereby are *enslaved to*

such State or States, having the *greater number of votes*, in the *same manner* as in the case before put of *individuals* where *one* has *more votes than the others*—That the reason why each individual man in forming a State government should have an equal vote is, because each individual before he enters into government is *equally free* and *independent*—So *each State*, when *States enter* into a *federal government*, are entitled to an *equal vote*, because before they entered into such federal government, *each State* was *equally free* and *equally independent*—That *adequate* representation of *men formed into a State government*, consists in *each man* having an *equal voice*, either personally, or if by representatives, that he should have an equal voice in choosing the representative—So adequate representation of *States* in a *federal government*, consists in *each State* having an *equal voice* either in person or by its representative in every thing which relates to the federal government—That this *adequacy of representation* is *more important* in a *federal*, than in a *State* government, because the members of a State government, the *district* of which is *not very large*, have generally such a *common interest*, that laws can scarcely be made by *one* part *oppressive* to the *others*, without *their suffering in common;* but the *different States* composing an *extensive federal empire*, widely distant *one* from the *other*, may have *interests so totally distinct*, that the *one* part might be be greatly *benefited* by what would be *destructive* to the *other*.

They were not satisfied by resting it on principles; they also appealed to 2.4.30
history—They shewed that in the Amphyctionic confederation of the Grecian cities, *each city* however *different* in *wealth*, *strength*, and other *circumstances*, sent the same *number* of deputies, and had *each* an *equal voice* in every thing that related to the common concerns of Greece. It was shewn that in the seven Provinces of the United Netherlands, and the confederated Cantons of Switzerland, *each Canton* and *each province* have an *equal vote*, although there are as great distinctions of wealth, strength, population, and extent of territory among *those provinces* and *those Cantons*, as among *these States*. It was said, that the maxim that taxation and representation ought to go together, was true so far, that no person ought to be *taxed* who is not *represented*, but not in the extent insisted upon, to wit, that the *quantum* of *taxation* and *representation* ought to be the *same;* on the contrary, the *quantum* of *representation* depends upon the quantum of *freedom*, and therefore *all*, whether *individual States*, or individual *men*, who are *equally free*, have a right to *equal representation*—That to those who insist that he who pays the greatest share of taxes, ought to have the greatest number of votes; it is a sufficient answer to say, that *this rule* would be *destructive* of the *liberty* of the *others*, and would render *them slaves* to the *more rich* and *wealthy*—That if one man pays *more taxes* than another, it is because he has *more wealth* to be protected by government, and he receives greater benefits from the government—So if one State pays more to the federal government, it is because as a State, she enjoys greater blessings from it; she

has more wealth protected by it, or a greater number of inhabitants, whose rights are secured, and who share its advantages.

2.4.31 It was urged, that upon these principles the Pennsylvanian, or inhabitant of a large State, was of as much consequence as the inhabitant of Jersey, Delaware, Maryland, or any other State—That *his consequence* was to be decided by *his situation* in his *own State;* that if he was *there* as *free*, if he had as great share in the forming of his own government, and in the making and executing its laws, as the inhabitants of those other States, then was he equally important and of equal consequence—Suppose a confederation of States had never been adopted, but every State had remained absolutely in its independent situation, no person could with propriety, say that the citizen of the large State was not as important as the citizen of the smaller, the confederation of the States cannot alter the case. It was said, that in all transactions *between State and State*, the freedom, independence, importance and consequence, even the individuality of each citizen of the different States, might with propriety be said to be swallowed up, or concentrated in the independence, the freedom and the individuality *of the State* of which they are citizens—That the *Thirteen States* are *thirteen distinct political individual existences* as to each other; that the *federal* government is or *ought to be* a government *over these thirteen political individual existences*, which form the members of that government; and that as the *largest State* is only a *single individual* of this government, it ought to have only *one vote;* the *smallest State* also being *one individual member* of this government, ought also to have *one vote*—To those who urged that the States have equal suffrage, was contrary to the feelings of the human heart, it was answered, that it was admitted to be contrary to the feelings of *pride* and *ambition;* but those were feelings which ought not to be gratified at the expence of *freedom.*

2.4.32 It was urged, that the position that great States would have great objects in view, in which they would not suffer the less states to thwart them, was one of the strongest reasons why inequality of representation ought not to be admitted. If those great objects were not *inconsistent* with the interest of the *less States*, they would readily concur in them, but if they were *inconsistent* with the *interest* of a *majority of the States* composing the government, in that case *two* or *three States* ought not to have it in their power to *aggrandize themselves* at the *expence of all the rest*—To those who alledged that equality of suffrage in our federal government, was the poisonous source from which all our misfortunes flowed, it was answered, that the allegation was not founded in fact—That *equality of suffrage* had *never been complained of by the States* as a *defect* in our federal system—That among the eminent writers, foreigners and others, who had treated of the defects of our confederation, and proposed alterations, *none had proposed an alteration in this part of the system:* And members of the convention both in and out of Congress, who advocated the equality of suffrage,

called upon their opponents both in and out of Congress, and challenged them to produce *one single instance* where a *bad measure* had been adopted, or a *good measure* had failed of adoption in consequence of the States having an *equal vote;* on the contrary, they urged, that all our evils flowed from the *want of power* in the federal head, and that let the *right of suffrage* in the States be *altered in any manner whatever,* if no *greater powers were given* to the government, the *same inconveniences would continue.*

It was denied that the *equality of suffrage* was *originally* agreed to on principles of *necessity* or *expediency,* on the contrary, that it was adopted on the principles of the *rights of men* and the *rights of States* which were *then* well known, and which then influenced our conduct although *now* they seem to be *forgotten*—For this the journals of Congress were appealed to; it was from them shewn, that when the Committee of Congress reported to that body the articles of confederation, the very first article which became the subject of discussion, was that respecting equality of suffrage—That Virginia proposed divers modes of suffrage, all on the principle of inequality, which were *almost unanimously* rejected; that on the question for adopting the article, it passed, Virginia being the *only* State which voted in the *negative*—That after the articles of confederation were submitted to the States by them to be ratified, almost every State proposed certain amendment, which they instructed their delegates to endeavour to obtain before ratification, and that among all the amendments proposed, *not one State,* not even Virginia, proposed an amendment of that *article, securing the equality of suffrage*—the most convincing proof it was agreed to and adopted, not from *necessity,* but *upon a full conviction,* that according to the principles of free government, the States had a *right to that equality of suffrage.* 2.4.33

But, Sir, it was to no purpose that the futility of their objections were shewn—when driven from the *pretence* that the *equality of suffrage* had been originally agreed to on principles of *expediency* and *necessity,* the representatives of the *large States* persisting in a declaration, that they would never agree to admit the *smaller States* to an *equality* of suffrage—In answer to this, they were informed, and informed in terms the *most strong* and *energetic* that could *possibly be used,* that *we never would agree* to a system giving them the *undue influence* and *superiority* they proposed—That we would risque every possible consequence—That from anarchy and confusion *order might arise*—That *slavery* was the *worst* that could ensue, and we considered the *system* proposed to be the *most complete, most abject* system of *slavery* that the wit of man ever devised, under the *pretence* of forming a government for free States—That we never would submit tamely and servilely to a *present certain evil* in dread of a *future,* which might be *imaginary;* that we were sensible the eyes of our country and the world were upon us—That we would not labour under the *imputation* of 2.4.34

being *unwilling* to *form a strong* and *energetic federal government;* but we would publish the system which we *approved*, and also that which we *opposed*, and leave it to our country and the world at large to judge between us, who *best understood* the rights of *free men* and *free States*, and who *best advocated them;* and to the same tribunal we would submit, who ought to be answerable for all the consequences which might arise to the union from the convention breaking up, without proposing any system to their constituents.—During this debate we were *threatened*, that if we did not agree to the system proposed, we *never* should have an *opportunity* of *meeting in convention* to deliberate on *another*, and this was frequently urged—In answer, we called upon them to shew *what was to prevent it*, and from what quarter was our danger to proceed; was it from a *foreign enemy?* Our *distance* from Europe, and the *political situation* of that country, left us but little to fear: Was there any *ambitious State* or *States, who in violation of every sacred obligation* was preparing to *enslave* the *other* States, and raise *itself* to *consequence* on the *ruin* of the *others?* Or was there any such *ambitious individual?* We did not apprehend it to be the case: but suppose it to be true, it rendered it the *more necessary* that *we* should *sacredly guard against a system* which might enable *all those ambitious views to be carried into effect, even under the sanction of the constitution and government:* In fine, Sir, *all these threats* were treated with *contempt*, and they were told that we apprehended but *one reason* to prevent the States meeting again in convention; that when they discovered the part *this* convention had acted, and how much its members were *abusing the trust* reposed in them, the States would never trust *another* convention. At length, Sir, after every argument had been exhausted by the advocates of equality of representation, the question was called, when a majority decided in favour of the inequality—Massachusetts, Pennsylvania, Virginia, North-Carolina, South-Carolina and Georgia voting for it—Connecticut, New-York, New-Jersey, and Delaware against it; Maryland divided.[6] It may be thought surprising, Sir, that Georgia, a State *now small* and comparatively *trifling* in the union, should advocate this system of *unequal representation*, giving up her *present* equality in the federal government, and sinking herself almost to total insignificance in the scale: but, Sir, it must be considered that Georgia has the *most extensive* territory in the union, being *larger* than the *whole island of Great-Britain*, and *thirty* times as large as *Connecticut*. This system being designed to *preserve to the States their whole territory unbroken*, and to prevent the erection of new States within the territory of any of them: Georgia looked forward *when her population*, being increased in some measure *proportioned to her territory*, she should *rise* in the scale and *give law* to the other States, and hence we found the delegation of Georgia warmly advocating the proposition of giving the States unequal representation. Next day the question came on with respect to the *inequality* of representation in the *second* branch, but little debate took place; the subject had been

exhausted on the former question. On the votes being taken, Massachusetts, Pennsylvania, Virginia, North-Carolina, and South-Carolina, voted for the inequality. Connecticut, New-York, New-Jersey, Delaware and Maryland* were in the negative. Georgia had only two representatives on the floor, *one* of whom (not I believe because he was against the measure, but from a conviction that we would go home, and thereby dissolve the convention before we would give up the question) voted also in the negative, by which that State was divided.[7]—Thus, Sir, on this *great* and *important* part of the system, the convention being equally divided, five States for the measure, five against, and one divided, there was a total stand, and we did not seem very likely to proceed any further. At length it was proposed, that a select committee should be balloted for, composed of a member from each State, which committee should endeavour to devise some mode of *conciliation* or *compromise;* I had the honor to be on that committee; we met and discussed the subject of difference; the *one side* insisted on the *inequality* of suffrage in *both branches*, the *other* insisted on the *equality* in both; each party was tenacious of their sentiments, when it was found that nothing could induce us to yield the inequality in both branches; they at length proposed by way of compromise, if *we* would *accede* to their wishes as to the *first* branch, *they* would *agree* to the equal representation in the *second*. To this it was answered, that there was no merit in the proposal, it was only consenting, after they had struggled to put *both their feet on our necks*, to take *one of them off*, provided we would consent to let them *keep the other on*, when they knew at the same time, that they could not put *one foot* on *our necks*, unless *we would consent to it*, and that by being permitted to keep on that one foot, they should *afterwards be able to place the other foot on whenever they pleased.*

They were also called on to inform us what *security* they could give us should we agree to this compromise, that they would *abide* by the plan of government formed upon it, *any longer* than it *suited their interest*, or they found it *expedient*.—"The States have a *right* to an equality of representation. This *is secured* to *us* by our *present* articles of confederation, *we* are in *possession* of this right; *it is now* to be *torn from us*. What security can you give us, that, when you get the *power* the *proposed system* will give you, when you have *men* and *money*, that you will not *force from* the States that *equality* of suffrage in the *second branch*, which you *now* deny to be their right, and *only give up* from *absolute necessity?* Will you tell us we ought to trust you because you *now enter into a solemn compact with us?* This you 2.4.35

*On *this question*, Mr. Martin was the *only* delegate for Maryland *present*, which circumstance *secured* the State a *negative*. Immediately after the question had been taken, and the President had declared the votes, Mr. Jenifer came into the convention, when Mr. King, from Massachusetts, valuing himself on Mr. Jenifer to divide the State of Maryland on this question, as he had on the former, requested of the President that the question might be put again—however, the motion was *too extraordinary* in its nature to meet with success!

have done *before*, and *now* treat it with the *utmost contempt*. Will you *now* make an appeal to the Supreme Being, and call on him to guarantee your observance of this compact? The *same* you have *formerly done* for your observance of the articles of confederation, which you are *now violating* in the most *wanton* manner!

2.4.36 The same reasons which you *now* urge for destroying our *present* federal government, may be urged for *abolishing the system* which you now propose to adopt; and as the *method prescribed* by the *articles* of confederation is *now totally disregarded* by you, as *little regard* may be shewn by you to the *rules prescribed* for the amendment of the *new system*, whenever having obtained power by the government, you shall *hereafter* be pleased either to *discard it entirely*, or so to *alter it* as to give *yourselves* all that *superiority* which *you* have *now contended* for, and to *obtain which* you have shewn yourselves disposed to *hazard* the union."—Such, Sir, was the language used on that occasion, and they were told that as we could not *possibly* have a stronger tie on them for their observance of the new system than we had for their observance of the articles of confederation, which had proved *totally insufficient*, it would be *wrong* and *imprudent* to *confide in them*. It was further observed, that the inequality of the representation would be *daily increasing*—That many of the States whose territory was confined, and whose population was at this time large in proportion to their territory, would probably twenty, thirty, or forty years hence, have no more representatives than at the introduction of the government, whereas the States having extensive territory, where lands are to be procured cheap, would be daily encreasing in the number of their inhabitants, not only from propagation, but from the *emigration* of the inhabitants of the *other States*, and would have soon double, or perhaps treble the number of representatives that they are to have at first, and thereby enormously *increase* their *influence* in the national councils. However, the *majority* of the select committee at length agreed to a series of propositions by way of compromise, part of which related to the representation in the first branch nearly as the system is now published: and part of them to the second branch securing in that equal representation, and reported them as a compromise upon the *express terms* that they were *wholly* to be *adopted* or *wholly to be rejected;* upon this compromise, a great number of the members so far engaged themselves, that if the system was progressed upon agreeable to the terms of compromise, they would lend it their names, by signing it, and would not actively oppose it, if their States should appear inclined to adopt it—Some, however, in which number was myself, who joined in the report, and agreed to proceed upon those principles, and see *what kind of a system* would *ultimately* be formed upon it, yet reserved to themselves in the most *explicit manner* the right of *finally* giving a *solemn dissent* to the system, if it was thought by them *inconsistent* with the *freedom* and *happiness* of their country—This, Sir, will account why the members of the convention so

generally signed their names to the system; not because they thought it a *proper one;* not because they *thoroughly approved*, or were *unanimous* for it; but because they thought it *better* than the system attempted to be forced upon them. This report of the select committee was after long dissention adopted by a majority of the convention, and the system was proceeded in accordingly—I believe near a fortnight, perhaps more, was spent in the discussion of this business, during which, we were on the verge of dissolution, scarce held together by the strength of an hair, though the public papers were announcing our extreme unanimity.

Mr. Speaker, I think it my duty to observe, that during this *struggle* to prevent the *large* States from having *all power* in their hands, which had nearly terminated in a dissolution of the convention: it did not appear to me, that either of those illustrious characters the Honorable Mr. *Washington*, or the President of the State of Pennsylvania, were disposed to favour the claims of the *smaller States*, against the *undue superiority* attempted by the *large States;* on the contrary, the Honorable President of Pennsylvania, was a *member* of the *committee* of *compromise*, and there *advocated* the *right* of the *large States* to an *inequality* in *both branches*, and only *ultimately conceded* it in the *second branch* on the *principle of conciliation;* when it was found no other terms would be accepted. This, Sir, I think it my duty to mention, for the *consideration of those* who endeavour to *prop up a dangerous* and *defective* system by *great names;* soon after this period, the Honourable Mr. *Yates* and Mr. *Lansing* of New-York, left us; they had uniformly opposed the system, and I *believe*, despairing of getting a *proper one* brought forward, or of *rendering any real service*, they returned no more. The *propositions* reported by the committee of the *whole house*, having been fully discussed by the convention, and with many alterations having been agreed to by a *majority*, a committee of five, were appointed to *detail* the system according to the principles contained in what had been agreed to by that majority; this was likely to require some time, and the convention adjourned for eight or ten days. Before the adjournment, I moved for liberty to be given to the different members to take *correct copies* of the *propositions*, to which the convention had then agreed, in order that during the recess of the convention, we might have an opportunity of *considering* them, and if it should be thought that any *alterations* or *amendments* were *necessary*, that we might be *prepared* against the convention met to bring them forward for discussion. But, Sir, the *same spirit* which caused *our doors to be shut*—our *proceedings to be kept secret*—*our journals to be locked up*—and *every avenue, as far as possible, to be shut* to *public information*, prevailed also in this case, and the proposal so *reasonable* and *necessary* was *rejected* by a *majority* of the convention; thereby *precluding even the members themselves, from the necessary means of information* and *deliberation* on the *important business in which they were engaged.*[8] 2.4.37

2.4.38 It has been observed, Mr. Speaker, by my honorable colleagues, that the debate respecting the mode of representation, was productive of considerable warmth, this observation is true; but, Sir, it is equally true, that if we could have *tamely* and *servilely* consented to be *bound in chains*, and *meanly condescended* to *assist* in *rivetting them fast*, we might have avoided all that warmth, and have proceeded with as much calmness and coolness as any stoick could have wished. Having thus, Sir, given the honorable members of this house, a short history of some interesting parts of our proceedings, I shall beg leave to take up the *system published* by the convention, and shall request your indulgence, while I make some observations on different parts of it, and give you such further information as may be in my power. [Here Mr. Martin read the *first section* of the *first article*, and then proceeded.] With respect to this part of the system, Mr. Speaker, there was a diversity of sentiment; those who were for *two* branches in the legislature, a house of representatives and a senate, urged the necessity of a *second* branch, to serve as a check upon the *first*, and used all those trite and common place arguments which may be proper and just, when applied to the formation of a *State government* over *individuals* variously distinguished in their habits and manners, fortune and rank; where a body chosen in a select manner, respectable for their wealth and dignity, may be necessary, frequently to prevent the hasty and rash measures of a representation more popular; but on the other side it was urged, that none of those arguments could with propriety be *applied* to the formation of a *federal government* over a number of *independent States*—That it is the *State governments* which are to watch over and protect the *rights* of the *individual*, whether *rich* or *poor*, or of *moderate circumstances*, and in which the *democratic* and *aristocratic* influence or principles are to be so *blended*, *modified*, and *checked*, as to prevent *oppression* and *injury*—That the *federal government* is to guard and protect the *States* and *their rights*, and to regulate *their common concerns*—That a *federal government* is formed by the *States*, as *States* that is in their *sovereign* capacities, in the same manner as *treaties* and *alliances* are formed—That a *sovereignty* considered as such, cannot be said to have jarring interests or principles, the one aristocratic, and the other democratic; but that the principles of a *sovereignty* considered as a sovereignty, are the *same*, whether that sovereignty is monarchical, aristocratical, democratical, or mixed—That the *history of mankind* doth not furnish *an instance* from its *earliest* period to the *present* time, of a *federal government* constituted of *two distinct branches*—That the *members* of the *federal government*, if appointed by the *States* in their *State capacities*, that is by their *legislatures*, as they *ought*, would be *select in their choice*, and coming from *different States*, having different *interests* and *views;* this difference of interests and views, would always be a *sufficient check* over the *whole;* and it was shewn, that even Adams, who the reviewers have justly observed, appears to be fond of

checks and *balances* as Lord Chesterfield of the *graces*, even *he* declares that a council consisting of *one* branch has always been found *sufficient* in a *federal* government.[9]

It was urged, that the government we were forming was not in reality a *federal* but a *national* government, not founded on the principles of the *preservation*, but the *abolition* or *consolidation* of all *State governments*—That we appeared *totally to have forgot* the business for which we were sent, and the situation of the country for which we were preparing our system—That we had not been sent to form a government over the *inhabitants* of America, considered as *individuals*, that as individuals they were all subject to their respective State governments, which governments would still remain, tho' the federal government should be dissolved—That the *system of government* we were *entrusted* to prepare, was a government over *these thirteen States;* but that in our proceedings, we adopted principles which would be right and proper, *only* on the supposition that there were *no State governments at all*, but that *all the inhabitants* of this *extensive continent* were in their *individual capacity, without government*, and in a *state of nature*—That accordingly the system proposes the legislature to consist of *two branches*, the *one* to be drawn from the *people at large*, immediately in their *individual capacity;* the *other* to be chose in a *more select manner*, as a *check* upon the *first*—It is in its very *introduction* declared to be a compact between the *people* of the United States *as individuals*, and it is to be *ratified* by the *people* at large in their capacity *as individuals;* all which it was said, would be quite right and proper, if there were *no State governments*, if *all the people* of this continent were in a *state of nature*, and we were forming one *national* government *for them as individuals*, and is nearly the same as was done in most of the *States*, when they formed their governments *over the people* who compose them. 2.4.39

Whereas it was urged, that the principles on which a *federal* government over *States* ought to be *constructed* and *ratified* are the *reverse;* that instead of the legislature consisting of *two branches*, *one* branch was sufficient, whether examined by the *dictates* of *reason*, or the *experience* of *ages*—That the representation instead of being drawn from the *people at large* as *individuals*, ought to be drawn from the *States* as *States* in their *sovereign* capacity—That in a *federal* government, the *parties* to the compact are not the *people* as *individuals*, but the *States* as *States*, and that it is by the *States* as *States* in their *sovereign* capacity, that the system of government ought to be *ratified*, and not by the *people* as *individuals*. 2.4.40

It was further said, that in a *federal* government over States *equally* free, sovereign, and independent, *every State* ought to have an equal share in *making* the *federal laws* or *regulations;* in *deciding* upon them, and in *carrying them into execution*, *neither* of which was the case in *this* system, but the *reverse*, the States not having an *equal voice* in the *legislature*, nor in the *appointment* of the *executive*, the *judges*, and the *other officers of govern-* 2.4.41

ment: it was insisted, that in the *whole* system there was but *one federal* feature, the appointment of the senators by the States in their sovereign capacity, that is by their legislatures, and the equality of suffrage in that branch; but it was said that *this feature* was only *federal in appearance.*

2.4.42 To prove *this*, and that the senate *as constituted* could not be a *security* for the *protection* and *preservation* of the *State* governments, and that the *senators* could not be justly considered the *representatives* of the *States* as *States*, it was observed, that upon *just principles of representation*, the *representative* ought to *speak* the sentiments of his *constitutents*, and ought to *vote* in the *same manner* that his *constituents* would do (as far as he can judge) provided his constituents were acting in *person*, and had the same knowledge and information with himself; and therefore that the *representative* ought to be *dependant* on his *constituents*, and *answerable* to them; that the connexion between the *representative* and the *represented*, ought to be as *near* and as *close* as possible; according to these principles, Mr. Speaker, in this State it is provided by *its constitution*, that the representatives in Congress, shall be chosen *annually*, shall be *paid* by the *State*, and shall be subject to *recall* even within the year; so *cautiously* has our *constitution* guarded against an *abuse* of the trust reposed in our representatives in the federal government; whereas by the *third* and *sixth* sections of the *first* article of this new system, the senators are to be chosen for *six* years instead of being chosen *annually;* instead of being paid by their *States* who send them, *they* in conjunction with the other branch, are to *pay themselves* out of the treasury of the United States; and are not liable to be *recalled* during the period for which they are chosen: Thus, Sir, for *six years* the *senators* are rendered totally and absolutely *independent* of *their States*, of *whom* they ought to be the *representatives*, without any *bond* or *tie* between them: During that time they may join in measures *ruinous* and *destructive* to *their States*, even such as should *totally annihilate* their *State governments*, and their States *cannot recall them*, nor *exercise any controul over them*. another consideration, Mr. Speaker, it was thought ought to have *great weight* to prove that the *smaller* States cannot *depend* on the *senate* for the *preservation* of *their rights*, either against *large* and *ambitious States*, or against an *ambitious, aspiring President*. The senate, Sir, is so constituted, that they are not only to compose one branch of the legislature, but by the second section of the second article, they are to *compose a privy council for the President;* hence, it will be necessary, that they should be, in a great measure, a *permanent* body, *constantly residing* at the seat of government. *Seven* years is esteemed for the life of a man;[10] it can hardly be supposed, that a senator, especially from the States remote from the seat of empire, will accept of an appointment which must *estrange* him for *six years from his State*, without giving up to a great degree his prospects in his *own State*. If he has a family, he will take his family with him to the place where the government shall be fixed, *that* will become his *home*, and there is every

reason to expect, that his *future* views and prospects will *centre* in the *favours* and *emoluments* either of the *general government*, or of the government of *that State* where the seat of empire is established:—In *either* case, he is *lost* to his *own State*. If he places his future prospects in the favours and emoluments of the *general government*, he will become the *dependant* and *creature* of the *President*, as the system *enables* a senator to be *appointed to offices*, and without the *nomination* of the *President*, *no appointment can take place;* as *such*, he will favour the wishes of the President, and concur in his measures, who, if he has no *ambitious views of his own* to gratify, may be *too favourable* to the *ambitious views* of the *large States*, who will have an *undue share* in his *original appointment*, and *on whom* he will be *more dependant* afterwards than on the States which are smaller. If the senator places his future prospects in that *State* where the seat of empire is fixed; from that time he will be in every question wherein its particular interest may be concerned the *representative* of *that State*, not of *his own*.

But even this provision *apparently* for the *security* of the *State governments*, *inadequate* as it is, is *entirely left* at the *mercy* of the general government, for by the fourth section of the first article, it is *expressly provided*, that the *Congress* shall have a power to *make* and *alter* all regulations concerning the *time* and *manner* of *holding elections for senators;* a provision, *expressly looking forward to*, and *I have no doubt designed for the utter extinction and abolition of all State governments;* nor will this, I believe, be doubted by any person, when I inform you that some of the warm advocates and patrons of the system in convention, *strenuously opposed* the *choice* of the senators by the *State legislatures*, *insisting* that the *State governments ought not to be introduced in any manner* so as to be *component parts of*, or *instruments for carrying into execution*, the general government: Nay, so far were the friends of the system from pretending that they meant it, or considered it as a *federal* system, that on the question being proposed, "that a union of the States, merely federal, ought to be the sole object of the exercise of the powers vested in the convention;" it was negatived by a majority of the members, and it was resolved, "that a *national* government ought to be formed"—afterwards the word "*national*" was struck out by them, because they thought the *word* might tend to *alarm:*[11] and although *now*, they who *advocate* the system, pretend to call themselves *federalists*, in convention the distinction was quite the reverse; those who *opposed* the system, were *there* considered and styled the *federal party*, those who *advocated* it, the *antifederal*.[12] 2.4.43

Viewing it as a *national*, not a *federal* government, as calculated and designed not to *protect* and *preserve*, but to *abolish* and *annihilate* the *State governments*, it was opposed for the following reasons, it was said, that this continent was *much too extensive* for *one national* government, which should have sufficient *power* and *energy* to *pervade* and hold in *obedience* 2.4.44

and subjection all its *parts*, consistent with the *enjoyment* and *preservation* of *liberty;* that the genius and habits of the people of America, were opposed to such a government—That during their connexion with Great-Britain, they had been accustomed to have all their concerns transacted within a narrow circle, their *colonial district;* they had been accustomed to have their seats of government near them, to which they might have access, without much inconvenience, when their business should require it—That at *this time* we find if a *county* is *rather large* the people complain of the inconvenience, and clamour for a division of their county, or for a removal of the place where their courts are held, so as to render it more central and convenient—That in those States, the territory of which is extensive, as soon as the population increases remote from the seat of government, the inhabitants are urgent for a removal of the seat of their government, or to be erected into a new State—As a proof of this, the inhabitants of the western parts of Virginia and North-Carolina, of Vermont and the Province of Main, were instances, even the inhabitants of the western parts of Pennsylvania, who it is said, already seriously look forward to the time when they shall either be erected into a new State, or have their seat of government removed to the Susquehanna.—If the inhabitants of the different States consider it as a grievance to attend a *country court* or the *seat* of their *own government*, when a little inconvenient, can it be supposed they would ever *submit* to have a *national government* established, the *seat* of which would be *more than a thousand miles removed from some of them?* It was insisted that governments of a *republican nature*, are those *best* calculated to *preserve* the *freedom* and *happiness* of the citizen—That governments of *this kind*, are *only calculated* for a territory but *small* in its extent; that the *only* method by which an extensive continent like America could be *connected* and *united* together consistent with the principles of freedom, must be by having a *number* of *strong* and *energetic State governments* for securing and protecting the rights of *individuals* forming those governments, and for regulating all their concerns; and a strong energetic *federal* government *over those States* for the protection and preservation, and for regulating the *common* concerns of the State. It was further insisted, that even if it was possible to effect a total abolition of the State governments at this time, and to establish one general government over the people of America, it *could not long subsist*, but in a *little time* would again be broken into a *variety* of governments of a *smaller extent*, similar in some manner to the present situation of this continent; the principal difference in all probability would be that the governments, *so established*, being affected by some *violent convulsion*, might not be formed on principles so *favourable* to *liberty* as those of our *present* State governments—That *this* ought to be an *important consideration* to such of the States who had *excellent* governments, which was the case with Maryland and most others, whatever it might be to persons who *disapproving* of their particular State government would be willing

to *hazard* every thing to *overturn* and *destroy* it. These reasons, Sir, influenced *me* to *vote* against *two* branches in the legislature, and against every part of the system which was *repugnant* to the principles of a *federal* government—Nor was there a single argument urged, or reason assigned, which to my mind was satisfactory, to prove that a good government on *federal* principles was unattainable, the whole of their arguments only proving, what none of us controverted, that our federal government as *originally formed* was *defective* and *wanted amendment*—However, a *majority* of the convention hastily and inconsiderately, without condescending to make a fair trial, in their great wisdom, decided that a kind of government which a Montesquieu and a Price have declared the best calculated of any to preserve internal liberty, and to enjoy external strength and security, and the only one by which a large continent can be connected and united, consistent with the principles of liberty[13] was totally impracticable, and they acted accordingly.

With respect to *that part* of the *second* section of the *first* article, which relates to the *apportionment of representation* and *direct taxation*, there were considerable objections made to it, besides the great objection of inequality—It was urged, that no principle could justify taking *slaves* into computation in *apportioning* the number of *representatives* a State should have in the government[14]—That it involved the absurdity of *increasing* the power of a State in making laws for *free men* in *proportion* as that State *violated* the *rights of freedom*—That it might be proper to take slaves into consideration, when *taxes* were to be apportioned, because it had a tendency to *discourage slavery;* but to take them into account in *giving representation* tended to *encourage* the *slave trade*, and to make it the *interest* of the States to *continue* that *infamous traffic*—That slaves could not be taken into account as *men*, or *citizens*, because they were not admitted to the *rights of citizens*, in the States which adopted or continued slavery—If they were to be taken into account as *property*, it was asked, what peculiar circumstance should render this property (of *all others* the most *odious* in its nature) entitled to the *high privilege* of conferring *consequence* and *power* in the *government* to its possessors, rather than *any other* property: and why *slaves* should, as property be taken into account rather than *horses, cattle, mules,* or any *other species;* and it was observed by an honourable member from Massachusetts, that he considered it as dishonourable and humiliating to enter into compact with the *slaves* of the *southern States*, as it would with the *horses* and *mules* of the *eastern*.[15] It was also objected, that the *numbers* of representatives appointed by this section to be sent by the particular States to compose the *first* legislature, were not precisely *agreeable* to the *rule* of representation adopted by this system, and that the numbers in this section are *artfully lessened* for the *large* States, while the *smaller* States have their *full proportion* in order to prevent the *undue influence* which the *large* States will have in the government from being *too apparent;*[16] and I 2.4.45

think, Mr. Speaker, that this objection is *well founded.* I have taken some pains to obtain information of the number of free men and slaves in the different States, and I have reason to believe, that if the estimate was *now* taken, which is directed, and one delegate to be sent for every thirty thousand inhabitants, that Virginia would have at least *twelve* delegates, Massachusetts *eleven,* and Pennsylvania *ten,* instead of the number stated in *this section;* where the *other* States, I believe, would not have more than the number there allowed them, nor would Georgia, most probably at present, send more than *two*—If I am right, Mr. Speaker, upon the enumeration being made, and the representation being apportioned according to the rule prescribed, the *whole number* of delegates would be *seventy-one, thirty-six* of which would be a *quorum* to do business; the delegates of Virginia, Massachusetts, and Pennsylvania, would amount to *thirty-three* of that quorum—Those three States will, therefore, have *much more* than *equal* power and influence in *making* the laws and regulations, which are to affect this continent, and will have a *moral certainty* of *preventing* any laws or regulations which *they disapprove,* although they might be thought ever so *necessary* by a *great majority* of the States—It was further objected, that even if the States who had most inhabitants ought to have a greater number of delegates, yet the *number of delegates* ought not to be in *exact proportion* to the *number of inhabitants,* because the influence and power of those States whose delegates are numerous, will be *greater* when compared to the influence and power of the other States, than the *proportion* which the numbers of their delegates bear to each other; as for instance, though Delaware has *one* delegate, and Virginia but *ten,* yet Virginia has *more* than *ten times* as much *power* and *influence* in the government as Delaware; to prove this, it was observed, that *Virginia* would have a *much greater* chance to carry any measure than *any number of States,* whose delegates were altogether ten (suppose the States of Delaware, Connecticut, Rhode-Island, and New-Hampshire) since the *ten* delegates from Virginia in every thing that related to the interest of that State would *act in union,* and *move one solid and compact body,* whereas the *delegates of these four States,* though collectively *equal* in number to those from Virginia, coming from *different* States, having different *interests,* will be less likely to harmonize and move in concert. As a further proof it was said, that Virginia, as the system is now reported, by uniting with her the delegates of *four* other States, can carry a question *against* the sense and interest of *eight* States by *sixty-four* different combinations; the *four* States voting with Virginia, being every time *so far different* as not to be composed of the *same four;* whereas the State of Delaware can only, by uniting four other States with her, carry a measure against the sense of eight States by *two* different combinations—a mathematical proof that the State of *Virginia* has *thirty-two* times greater chance of carrying a measure against the sense of eight States than *Delaware,* although Virginia has only *ten times* as many delegates: It was also shewn,

that the idea was totally fallacious which was attempted to be maintained, that if a State had *one thirteenth* part of the *numbers composing the delegation in this system*, such State would have *as much influence* as under the articles of confederation; to prove the fallacy of this idea it was shewn, that under the articles of confederation the State of Maryland had but *one* vote in *thirteen*, yet no measure could be carried against her interests without *seven States*, a majority of the whole concurring in it; whereas in this system, though Maryland has *six* votes, which is *more* than the *proportion* of *one* in *thirteen*, yet *five* States may, in a *variety of combinations*, carry a question *against* her interest, tho' *seven* other States concur with her, and *six* States by a *much greater* number of combinations, may carry a measure against *Maryland*, united with *six other States*. I shall here, Sir, just observe, that as the committee of detail reported the system, the delegates from the different States were to be *one* for every *forty thousand* inhabitants; it was afterwards altered to one for every *thirty* thousand; this alteration was made after I left the convention, at the instance of whom I know not, but it is evident, that the alteration is in favour of the *States* which have large and extensive territory, to increase their power and influence in the government, and to the injury of the *smaller States*—Since it is the States of *extensive* territory, who will *most speedily* increase the number of their *inhabitants* as before has been observed, and will therefore, most speedily procure an increase to the number of their *delegates*—By this alteration Virginia, North-Carolina, or Georgia, by obtaining one hundred and twenty thousand additional inhabitants, will be entitled to *four* additional delegates, whereas such State would only have been entitled to *three*, if *forty thousand* had *remained* the number by which to apportion the delegation. As to that part of this section that relates to direct taxation, there was also an objection for the following reasons, it was said that a *large sum* of money was to be brought into the national treasury by the *duties* on commerce, which would be almost *wholly* paid by the *commercial States*, it would be *unequal* and *unjust* that the sum which was necessary to be raised by *direct taxation* should be apportioned *equally* upon all the States, obliging the commercial States to pay as large a share of the revenue arising therefrom, as the States from whom no revenue had been drawn by imposts; since the wealth and industry of the inhabitants of the commercial States will in the first place be severely taxed through their commerce, and afterwards be *equally taxed* with the industry and wealth of the inhabitants of the other States, *who have paid no part* of that *revenue*, so that by this provision, the inhabitants of the commercial States are in this system obliged to bear an unreasonable and disproportionate share in the expences of the union, and the payment of that foreign and domestic debt, which was incurred not more for the benefit of the commercial than of the other States.

In the *sixth* section of the *first* article, it is provided, that senators and representatives may be appointed to any civil office under the authority of 2.4.46

the United States, except such as shall have been created, or the emoluments of which have been increased during the time for which they were elected: upon this subject, Sir, there was a great diversity of sentiment among the members of the convention—As the propositions were reported by the committee of the whole house, a senator or representative could not be appointed to *any office* under a *particular State*, or under the *United States*, during the time for which they were chosen, nor to any office under the United States until one year after the expiration of that time.—It was said, and in my opinion justly, that no good reason could be assigned why a senator or representative should be incapacitated to hold an office in *his own* government, since it can only bind him more closely to his State, and attach him the more to its interests, which, as its representative, he is bound to consult and sacredly guard, as far as is consistent with the welfare of the union; and therefore, at most, would only add the additional motive of gratitude for discharging his duty; and according to this idea, the clause which prevented senators or delegates from holding offices in their own States, was rejected by a considerable majority; but, Sir, we sacredly endeavoured to preserve all that part of the resolution which prevented them from being *eligible* to *offices* under the *United States*, as we considered it *essentially necessary* to preserve the *integrity*, *independence*, and *dignity* of the legislature, and to secure its members from *corruption*.

2.4.47 I was in the number of those who were extremely solicitous to preserve this part of the report; but there was a powerful opposition made by such who wished the members of the legislature to be eligible to offices under the United States—*Three* different times did they attempt to procure an alteration, and *as often* failed, a majority firmly adhering to the resolution as reported by the committee; however, an alteration was at length by dint of perseverance, obtained even within the last twelve days of the convention, for it happened after I left Philadelphia[17]—As to the exception that they cannot be appointed to offices created by themselves, or the emoluments of which are by themselves increased, it is certainly of little consequence, since they may easily evade it by creating new offices, to which may be appointed the persons who fill the offices before created, and thereby vacancies will be made, which may be filled by the members who for that purpose have created the new offices.

2.4.48 It is true, the acceptance of an office vacates their seat, nor can they be re-elected during their continuance in office; but it was said, that the evil would first take place, that the price for the office would be paid before it was obtained; that vacating the seat of the person who was appointed to office, made way for the admission of a new member, who would come there as desirous to obtain an office as him whom he succeeded, and as ready to pay the price necessary to obtain it; in fine, that it would be only driving away the flies who were *filled*, to make room for the those that were *hungry*—And as the system is now reported, the *President* having the power

to *nominate* to *all offices*, it must be evident, that there is *no possible security* for the *integrity* and *independence* of the *legislature*, but that they are most *unduly* placed under the *influence* of the *President*, and exposed to *bribery* and *corruption*.

The *seventh* section of this article was also the subject of contest—It was thought by many members of the convention, that it was very wrong to confine the origination of all revenue bills to the house of representatives, since the members of the senate will be chosen by the people as well as the members of the house of delegates, if not *immediately*, yet *mediately*, being chosen by the members of the State legislature, which members are elected by the *people*, and that it makes no *real* difference whether we do a thing *in person*, or by a *deputy*, or agent, *appointed* by *us* for *that purpose*. 2.4.49

That no argument can be drawn from the House of Lords in the British constitution, since they are neither mediately nor immediately the representatives of the people, but are one of the *three estates*, composing that kingdom, having *hereditary right* and *privileges*, *distinct* from, and *independent* of, the *people*. 2.4.50

That it may, and probably will be a future source of dispute and controversy between the two branches, what are, or are not revenue bills, and the more so, as they are not *defined* in the constitution; which controversies may be difficult to settle, and may become serious in their consequences, their being no power in the constitution to decide upon, or authorised in cases of absolute necessity to terminate them by a prorogation or dissolution of either of the branches; a remedy provided in the British constitution, where the King has that power, which has been found necessary at times to be exercised in case of violent dissentions between the Lords and Commons on the subject of money bills. 2.4.51

That every regulation of commerce; every law relative to excises, stamps, the post-office, the imposing of taxes, and their collection, the creation of courts and offices; in fine, every law for the union, if enforced by any pecuniary sanctions, as they would tend to bring money into the continental treasury, might and no doubt would be considered a revenue act—That consequently the senate, the members of whom will it may be presumed, be the most select in their choice, and consist of men the most enlightened, and of the greatest abilities, who from the duration of their appointment and the permanency of their body, will probably be best acquainted with the common concerns of the States, and with the means of providing for them, will be rendered almost useless as a part of the legislature; and that they will have but little to do in that capacity, except patiently to wait the proceedings of the house of representatives, and afterwards examine and approve, or propose amendments. 2.4.52

There were also objections to that part of this section which relates to the *negative* of the *President*.—There were some who thought no good reason could be assigned for giving the President a negative of *any kind*—Upon the 2.4.53

principle of a check to the proceedings of the legislature, it was said to be unnecessary; that the two branches having a controul over each others proceedings; and the senate being chosen by the State legislatures, and being composed of members from the *different* States, there would always be a sufficient guard against measures being *hastily* or *rashly* adopted.

2.4.54 That the *President* was not likely to have *more wisdom* or *integrity* than the *senators*, or *any of them*, or to *better know* or *consult* the interest of the States, than *any member* of the senate, so as to be entitled to a negative on that principle—And as to the precedent from the British constitution (for we were eternally troubled with arguments and precedents from the British government) it was said it would not apply. The King of Great-Britain there composed *one* of the *three estates* of the kingdom; *he* was possessed of *rights* and *privileges*, as such, *distinct from* the Lords and Commons; *rights* and *privileges* which *descended* to his *heirs*, and were inheritable by them; that for the *preservation* of these it was necessary *he* should have a negative, but that this was not the case with the President of the United States, who was no more than an *officer* of government, the *sovereignty* was not in *him*, but in the *legislature:* And it was further urged, even if he was allowed a negative, it ought not to be of so great extent as that given by the system, since his *single voice* is to countervail the *whole* of *either* branch, and any number *less* than *two-thirds* of the other; however, a majority of the convention was of a different opinion, and adopted it as it now makes a part of the system.

2.4.55 By the *eighth* section of this article, Congress is to have power to *lay* and *collect taxes, duties, imposts,* and *excises*.—When we met in convention after our adjournment, to receive the report of the committee of detail, the members of that committee were requested to inform us, what powers were meant to be vested in Congress by the word *duties* in this section, since the word *imposts* extended to duties on goods *imported,* and by another part of the system no duties on *exports* were to be laid: In answer to this inquiry we were informed, that it was meant to give the general government the power of laying *stamp* duties on paper, parchment, and vellum. We then proposed to have the power inserted in *express words,* least disputes hereafter might arise on the subject, and that the meaning might be understood by *all* who were to be *affected* by it; but to this it was objected, because it was said that the word stamp would probably sound *odiously* in the ears of many of the inhabitants, and be a cause of objection.[18] By the power of imposing *stamp duties* the Congress will have a *right* to declare, that *no wills, deeds,* or other *instruments* of writing, shall be *good* and *valid,* without being *stamped*—that without being reduced to *writing,* and being *stamped,* no *bargain, sale, transfer of property,* or *contract* of any kind or nature whatsoever shall be *binding;* and also that no *exemplifications of records, depositions,* or *probates* of any kind shall be received in evidence, unless they have the same solemnity—They may likewise oblige all proceedings of a *judicial* nature to

be *stamped* to give them effect—Those stamp duties may be imposed to any amount they please, and under the pretence of *securing* the *collection* of these duties, and to prevent the laws which imposed them from being evaded, the Congress may bring the *decision* of all *questions* relating to the *conveyance, disposition* and *rights* of *property*, and *every question* relating to *contracts* between man and man into the *courts* of the *general government*.—Their *inferior* courts in the *first* instance and the *superior* court by *appeal*. By the power to lay and collect imposts, they may impose duties on *any* or *every* article of *commerce* imported into these States to what amount they please. By the power to lay *excises*, a power very odious in its nature, since it authorises officers to go into your *houses*, your *kitchens*, your *cellars*, and to examine into your *private concerns;* the Congress may impose *duties* on every *article* of *use* or *consumption*, on the *food* that we *eat*, on the *liquors* we *drink*, on the *clothes* that we *wear*, the *glass* which *enlighten* our *houses*, or the *hearths* necessary for our *warmth* and *comfort*. By the power to lay and collect taxes, they may proceed to *direct taxation* on *every individual* either by a *capitation* tax on their *heads*, or an *assessment* on their *property*. By this part of the section therefore, the government has a power to lay what duties they please on *goods imported;* to lay what duties they please afterwards on whatever we *use* or *consume;* to impose *stamp duties* to what amount they please, and in whatever case they please: afterwards to impose on the people *direct taxes*, by capitation tax, or by assessment, to what amount they choose, and thus to *sluice* them at *every vein* as long as they have a *drop* of blood, without any controul, limitation, or restraint; while *all the officers* for *collecting* these taxes, stamp duties, imposts, and excises, are to be appointed by the *general government*, under its directions, not accountable to the *States;* nor is there *even* a security that they shall be *citizens* of the *respective States*, in which they are to exercise their offices; at the same time the construction of *every* law *imposing* any and all these taxes and duties, and *directing* the collection of them, and *every question* arising thereon, and on the *conduct* of the *officers* appointed to execute these laws, and to collect these taxes and duties so various in their kinds, are *taken away* from the courts of justice of the *different States*, and *confined* to the courts of the *general government*, there to be *heard* and *determined* by judges holding their offices under the appointment *not* of the *States*, but of the *general government*.

Many of the members, and myself in the number, thought that the *States* 2.4.56
were much *better judges* of the circumstances of their citizens, and what sum of money could be collected from them by *direct taxation*, and of the manner in which it could be raised, with the *greatest ease* and *convenience* to their citizens, than the *general government* could be; and that the general government *ought not* to have the power of laying direct taxes in any case, but in that of the *delinquency* of a State.—Agreeable to this sentiment, I brought in a proposition on which a vote of the convention was taken, the

proposition was as follows: "And wherever the legislature of the United States shall find it necessary that *revenue* should be raised by *direct taxation*, having apportioned the same by the above rule, *requisitions* shall be made of the respective States to pay into the continental treasury their respective quotas, *within a time* in the said requisition to be specified, and in case of any of the States *failing* to comply with such requisition, then and *then only*, to have power to devise and pass acts directing the mode and authorising the collection of the same."[19] Had this proposition been acceded to, the *dangerous* and *oppressive* power in the *general government* of imposing *direct taxes* on the inhabitants, which it now enjoys *in all cases*, would have been *only* vested in it, in case of the non-compliance of a State, as a *punishment* for its *delinquency*, and would have *ceased* the moment that the State *complied with the requisition*—But the proposition was rejected by a majority, consistent with their *aim* and *desire* of *increasing the power of the general government as far as possible, and destroying the powers and influence of the States*. And though there is a provision that all duties, imposts and excises shall be uniform, that is, to be laid to the same amount on the same articles in each State, yet this will not prevent Congress from having it in their power to cause them to fall *very unequal* and much hevier on *some* States than on *others*, because these duties may be laid on articles but *little* or *not at all used* in some States, and of *absolute necessity* for the use and consumption of others, in which case the *first* would pay *little* or *no part* of the revenue arising therefrom, while the *whole* or nearly the whole of it would be paid by the *last*, to wit, the States which use and consume the articles on which the imposts and excises are laid.

2.4.57 By our original articles of confederation, the Congress have a power to borrow money and emit bills of credit on the credit of the United States; agreeable to which was the *report on this* system as *made* by the *committee of detail*. When we came to this part of the report, a motion was made to strike out the words "to emit bills of credit;"[20] against the motion we urged, that it would be improper to *deprive* the Congress of that *power;* that it would be a novelty unprecedented to establish a government which should not have such authority—That it was impossible to look forward into futurity so far as to decide, that events might not happen that should render the *exercise* of such a power *absolutely* necessary—And that we doubted, whether if a war should take place it would be *possible* for this country to *defend* itself, without having recourse to *paper credit*, in which case there would be a *necessity* of becoming a *prey* to our *enemies*, or *violating* the *constitution* of our government; and that considering the administration of the government would be principally in the hands of the wealthy, there could be little reason to fear an *abuse* of the *power* by an unnecessary or injurious exercise of it—But, Sir, a majority of the convention, being wise beyond every event, and being willing to risque any political evil rather than admit the *idea* of a paper emission, in any *possible* case, refused to *trust* this

authority to a government, to which they were *lavishing* the most *unlimited* powers of *taxation*, and to the *mercy* of which they were willing *blindly* to *trust* the *liberty* and *property* of the *citizens* of *every State* in the union; and they *erased* that clause from the system.[21]

Among other powers given to this government in the eighth section, it has 2.4.58
that of appointing tribunals *inferior* to the *supreme court;* to this power there was an opposition. It was urged, that there, was no occasion for *inferior* courts of the *general government* to be appointed in the different States, and that such ought not to be admitted—That the different *State judiciaries* in the respective States would be *competent to*, and *sufficient for*, the cognizance in the *first instance* of all cases that should arise under the laws of the general government, which being by this system made the supreme law of the States, would be binding on the different State judiciaries—That by giving an *appeal* to the *supreme court* of the United States, the *general government* would have a *sufficient* check over their decisions, and security for the enforcing of their laws—That to have *inferior* courts appointed under the authority of Congress in the different States, would eventually *absorb* and *swallow up* the *State judiciaries*, by drawing all business from them to the courts of the general government, which the *extensive* and *undefined* powers, legislative and judicial, of which it is possessed, would *easily enable* it to do—That it would *unduly* and *dangerously* increase the *weight* and *influence* of Congress in the *several States*, be productive of a *prodigious number of officers*, and be attended with an *enormous* additional and unnecessary *expence*—That the judiciaries of the respective States not having power to decide upon the laws of the general government, but the determination on those laws being *confined* to the judiciaries appointed under the authority of Congress in the *first instance*, as well as on *appeal*, there would be a necessity for *judges* or magistrates of the general government, and those to a considerable number, in *each county* of *every State*—That there would be a necessity for courts to be holden by them in each county, and that these courts would stand in need of all the proper officers, such as *sheriffs*, *clerks* and others commissioned, under the authority of the general government: in fine, that the administration of justice, as it will relate to the laws of the general government would require in each State all the magistrates, courts, officers and expence, which is now found necessary in the respective States for the administration of justice as it relates to the laws of the State governments. But here again we were overruled by a majority, who *assuming* it as a *principle* that the general government and the State governments (as long as they should exist) would be at *perpetual variance* and *enmity*, and that their *interests* would constantly be *opposed* to each other, insisted for that reason that the *State judges* being citizens of their respective States, and holding their commissions under them, ought not, though *acting on oath*, to be *entrusted* in the administration of the laws of the general government.

2.4.59 By the eighth section of the first article, the Congress have also a power given them to raise and support *armies* without *any limitation* as to *numbers*, and without *any restriction* in *time of peace*. Thus, Sir, *this* plan of government, instead of *guarding against* a *standing army*, that *engine* of *arbitrary power*, which has so *often* and so *successfully* been used for the *subversion* of *freedom*, has in *its formation*, given it an *express* and *constitutional sanction*, and hath *provided for its introduction;* nor could this be prevented: I took the sense of the convention on a proposition, by which the Congress should not have power, *in time of peace*, to keep embodied more than a certain number of regular troops—*that number* to be ascertained by what should be considered a *respectable peace establishment*. This proposition was rejected by a majority, it being their determination, that the *power* of congress to keep up a *standing army*, even in *peace* should *only* be restrained by *their will* and *pleasure*.[22]

2.4.60 This section proceeds further to give a power to the Congress to provide for the calling forth the militia, to execute the laws of the union, suppress insurrections and repel invasions. As to *giving such a power* there was no objection; but it was thought by some, that this power *ought* to be given with certain *restrictions*. It was thought that not more than a certain *part* of the militia of any one State, ought to be obliged to *march out* of the same, or be *employed out* of the same, at any *one time*, without the consent of the legislature of such State. This *amendment* I endeavored to obtain; but it met with the same fate, which attended almost every attempt to *limit* the powers given to the general government, and *constitutionally* to guard against *their abuse*, it was not adopted.[23] As it now stands, the Congress will have the power, if they please, to march the *whole* militia of Maryland to the *remotest* part of the union, and keep them in service as long as they think proper, without being in any respect *dependent* upon the *government of Maryland* for this *unlimited exercise of power over its citizens. All of whom*, from the *lowest* to the *greatest*, may, during such service, be *subjected* to *military* law, and *tied up* and *whipped* at the *halbert* like the *meanest* of *slaves*.

2.4.61 By the *next* paragraph, Congress is to have the power to provide for *organizing*, *arming*, and *disciplining* the *militia*, and for *governing* such part of them as may be *employed in the service* of the United States.

2.4.62 For this *extraordinary* provision, by which the *militia*, the *only defence* and *protection* which the *State* can have for the security of *their rights* against *arbitrary encroachments* of the *general government*, is taken entirely *out of the power* of their *respective States*, and placed under the *power of Congress*, it was speciously assigned as a reason, that the general government would cause the militia to be better regulated and better disciplined than the State governments, and that it would be proper for the whole militia of the union to have a uniformity in their arms and exercise. To this it was answered, that the reason, however *specious*, was *not just;* that it would be

absurd the militia of the western settlements, who were exposed to an Indian enemy, should either be confined to the *same arms* or *exercise*, as the militia of the eastern or middle States; that the same penalties which would be sufficient to enforce an obedience to militia laws in some States, would be totally disregarded in others—That leaving the power to the several States, they would respectively best know the situation and circumstances of their citizens, and the regulations that would be necessary and sufficient to effect a well regulated militia in each—That we were satisfied the militia had heretofore been as well disciplined, as if they had been under the regulations of Congress; and that the States would now have an *additional* motive to keep their militia in proper order, and fit for service, as it would be the *only chance* to preserve their *existence* against a general government, armed with powers *sufficient* to destroy them. These observations, Sir, procured from some of the members an open avowal of those reasons, by which we believed before that they were actuated. They said, that as the States would be opposed to the general government, and at enmity with it, which, as I have already observed, they *assumed* as a *principle*, if the militia was under the controul and the authority of the respective States, it would *enable them* to *thwart* and *oppose* the general government:—They said the States ought to be at the mercy of the general government, and, therefore, that the militia ought to be put under its power, and not suffered to remain under the power of the respective States. In answer to these declarations, it was urged, that if after having obtained to the general government the great powers already granted, and among those, that of *raising and keeping up regular troops without limitation,* the *power* over the *militia* should be *taken away* from *the States,* and also given to the general government, it ought to be considered as the *last coup de grace* to the *State governments;* that it must be the most convincing proof, the advocates of this system design the *destruction* of the State governments, and that no *professions,* to the contrary, ought to be *trusted;* and that every State in the union ought to reject such a system with indignation, since, if the general government should attempt to oppress and enslave them, they could not have any possible means of self defence; because the proposed system, taking away from the States the right of organizing, arming and disciplining of the militia, the *first attempt* made by a *State* to put the militia in a situation to counteract the arbitrary measures of the general government, would be construed into an *act of rebellion,* or *treason;* and Congress would *instantly march* their *troops* into the State.—It was further observed, that when a government *wishes* to deprive their citizens of freedom, and reduce them to slavery, it *generally makes use of a standing army* for that purpose, and *leaves the militia in a situation as contemptible as possible, least they might oppose its arbitrary designs*—That in *this* system, we give the general government every provision it could wish for, and even *invite* it to *subvert* the *liberties* of the *States* and *their citizens,* since we give them the right to encrease and

keep up a standing army as numerous as *it* would wish, and by placing the militia under *its* power, enable it to leave the militia *totally unorganized, undisciplined,* and *even to disarm them;* while the *citizens,* so far from complaining of this *neglect,* might even esteem it a favor in the general government, as thereby they would be freed from the burthen of militia duties, and left to their own private occupations or pleasures. However, *all* arguments, and every reason that could be urged on *this* subject, as well as on many others, were obliged to yield to *one* that was *unanswerable,* a *majority* upon the division.

2.4.63 By the *ninth* section of this article, the importation of such persons as any of the States now existing, shall think proper to admit, shall not be prohibited prior to the year one thousand eight hundred and eight, but a duty may be imposed on such importation not exceeding ten dollars for each person.

2.4.64 The design of this clause is to prevent the general government from prohibiting the importation of slaves, but the same reasons which caused them to strike out the word "*national,*" and not admit the word "*stamps,*" influenced them here to guard against the word "*slaves,*" they anxiously sought to avoid the admission of expressions which might be odious in the ears of Americans, although they were willing to admit into their system those *things* which the *expressions* signified: And hence it is, that the clause is so worded, as really to authorise the general government to impose a duty of ten dollars on every foreigner who comes into a State to become a citizen, whether he comes *absolutely free,* or *qualifiedly* so as a servant; although this is contrary to the design of the framers, and the duty was only meant to extend to the importation of *slaves.*

2.4.65 This clause was the subject of a great diversity of sentiment in the convention;—as the system was reported by the committee of detail, the provision was general, that such importation should not be prohibited, without confining it to any particular period. This was rejected by eight States—Georgia, South-Carolina, and I think North-Carolina voting for it.[24]

2.4.66 We were then told by the delegates of the two first of those States, that their States would never agree to a system which put it in the power of the general government to prevent the importation of slaves, and that they, as delegates from those States, must withhold their assent from such a system.

2.4.67 A committee of one member from each State was chosen by ballot, to take this part of the system under their consideration, and to endeavour to agree upon some report, which should reconcile those States; to this committee also was referred the following proposition, which had been reported by the committee of detail, to wit, "No *navigation act* shall be passed without the assent of *two thirds* of the members present in each house;" a proposition which the *staple* and *commercial* States were solicitous to *retain,* lest their *commerce* should be placed too much under the power of the *eastern* States, but which these last States were as anxious to *reject.*—This

committee, of which also I had the honour to be a member, met and took under their consideration the subjects committed to them; I found the *eastern* States, notwithstanding their *aversion to slavery*, were very willing to indulge the southern States, at least with a temporary liberty to prosecute the *slave trade*, provided the southern States would in their turn gratify them, by laying no *restriction* on *navigation acts;* and after a very little time, the committee by a great majority, agreed on a report, by which the general government was to be prohibited from preventing the importation of slaves for a limited time, and the restrictive clause relative to navigation acts was to be omitted.

This report was adopted by a majority of the convention, but not without considerable opposition.—It was said, that we had but just assumed a place among independent nations, in consequence of our opposition to the attempts of Great-Britain to *enslave us;* that this opposition was grounded upon the *preservation* of *those rights*, to which God and Nature had entitled *us*, not in *particular*, but in *common* with *all the rest of mankind*—That we had *appealed* to the *Supreme being* for his *assistance*, as the *God of freedom*, who could not but *approve* our efforts to preserve the *rights* which he had thus *imparted to his creatures;* that now, when we scarcely had risen from our *knees*, from *supplicating* his *aid* and *protection*—in *forming our government* over *a free people*, a government formed pretendedly on the *principles* of *liberty* and for *its preservation*,—in *that* government to have a provision, not only putting it out *of its power* to *restrain* and *prevent* the *slave trade*, but *even encouraging that most infamous traffic*, by giving the *States power* and *influence* in the *union*, *in proportion* as they *cruelly and wantonly sport with the rights of their fellow creatures*, ought to be considered as a *solemn mockery of*, and *insult to, that God* whose protection we had then implored, and could not fail to hold us up in *detestation*, and render us *contemptible* to every *true friend* of liberty in the world. It was said, it ought to be considered that *national* crimes can *only be*, and *frequently are*, *punished* in this world by *national punishments*, and that the *continuance* of the slave trade, and thus giving it a *national sanction* and *encouragement*, ought to be considered as *justly exposing* us to the *displeasure* and *vengeance* of *Him*, who is equal Lord of all, and who views with equal eye, the poor *African slave* and his *American master!* 2.4.68

It was urged, that by this system, we were giving the general government full and absolute power to regulate commerce, under which general power it would have a right to *restrain, or totally prohibit* the *slave trade:* it must therefore, appear to the world absurd and disgraceful to the last degree, that we should *except* from the exercise of that power, the *only branch* of *commerce* which is *unjustifiable in its nature*, and *contrary* to the *rights* of *mankind*—That on the contrary, we ought *rather to prohibit expressly* in our *constitution*, the *further importation* of *slaves;* and to *authorise* the general government from time to time, to make such regulations as should be 2.4.69

thought most advantageous for the *gradual abolition* of *slavery*, and the *emancipation* of the *slaves* which are already in the States.

2.4.70 That *slavery* is *inconsistent* with the *genius* of *republicanism*, and has a tendency to *destroy* those *principles* on which it is *supported*, as it *lessens the sense* of the *equal rights* of *mankind*, and habituates us to *tyranny* and *oppression*. It was further urged, that by this system of government, every State is to be protected both from *foreign invasion* and from *domestic insurrections;* that from this consideration, it was of the *utmost importance* it should have a power to restrain the importation of slaves, since in proportion as the number of slaves were increased in any State, in the same proportion the State is *weakened* and *exposed* to foreign invasion, or domestic insurrection, and by *so much the less* will it be able to protect itself against *either;* and therefore will by so much the more, want aid from, and be a burthen to, the union. It was further said, that as in this system we were giving the general government a power under the idea of national character, or national interest, to regulate even our *weights* and *measures*, and have prohibited all possibility of *emitting paper money*, and *passing instalment laws*, *&c*. It must appear still more extraordinary, that we should prohibit the government from interfering with the slave trade, than which *nothing* could so *materially affect* both our *national honour* and *interest*.—These reasons influenced me both on the committee and in convention, most decidedly to oppose and vote against the clause, as it now makes a part of the system.

2.4.71 You will perceive, Sir, not only that the general government is prohibited from interfering in the slave trade *before* the year eighteen hundred and eight, but that there is no provision in the constitution that it shall *afterwards* be prohibited, nor any security that such prohibition will ever take place; and I think there is great reason to believe, that if the importation of slaves is permitted until the year eighteen hundred and eight, it will not be prohibited afterwards: At *this time* we do not generally hold this commerce in so *great* abhorrence as we have done—When our liberties were at stake, we *warmly* felt for the *common rights of men*—The danger being thought to be past, which threatened ourselves, we are daily growing *more insensible* to those rights—In those States who have restrained or prohibited the importation of slaves, it is only done by legislative acts which may be repealed—When those States find that they must in their *national character* and *connexion* suffer in the *disgrace*, and share in the *inconveniencies* attendant upon that detestable and iniquitous traffic, they may be desirous also to share in the *benefits* arising from it, and the odium attending it will be greatly effaced by the sanction which is given to it in the general government.

2.4.72 By the next paragraph, the general government is to have a *power* of *suspending* the *habeas corpus act*, in cases of *rebellion* or *invasion*.

As the State governments have a power of suspending the habeas corpus act in those cases, it was said, there could be no reason for giving such a power to the general government, since, whenever the *State* which is invaded, or in which an insurrection takes place, finds its safety requires it, *it* will make use of that power—*And* it was urged, that if we gave this power to the general government, it would be an engine of oppression in its hands, since whenever a State should oppose its views, however arbitrary and unconstitutional, and refuse submission to them, the general government may declare it to be *an act of rebellion*, and suspending the habeas corpus act, may *seize* upon the persons of those *advocates of freedom*, who have had *virtue* and *resolution* enough to excite the opposition, and may *imprison* them during its pleasure in the *remotest* part of the union, so that a citizen of Georgia might be *bastiled* in the furthest part of New-Hampshire; or a citizen of New-Hampshire in the furthest extreme to the south, cut off from their family, their friends, and their every connexion—These considerations induced me, Sir, to give my negative also to this clause.[25]

2.4.73 In this same section there is a provision that no preference shall be given to the ports of one State over another, and that vessels bound to or from one State shall not be obliged to enter, clear, or pay duties in another. This provision, as well as that which relates to the uniformity of impost duties and excises, was introduced, Sir, by the delegation of this State.[26]—Without such a provision, it would have been in the power of the general government to have compelled all ships sailing into, or out of the Cheseapeak, to clear and enter at Norfolk, or some port in Virginia—a regulation which would be extremely injurious to our commerce, but which would if considered merely as to the interest of the union, perhaps not be thought unreasonable, since it would render the collection of the revenue arising from commerce more certain and less expensive.

2.4.74 But, Sir, as the system is now reported, the general government have a *power* to *establish what ports they please in each State*, and to ascertain at what ports in every State ships shall clear and enter in such State, a power which *may* be so used as to *destroy* the *effect* of that provision, since by it may be established a port in such a place, as shall be so *inconvenient* to the State, as to render it *more eligible* for their shipping to clear and enter in *another* than in their *own State;* suppose, for instance, the general government should determine that all ships which cleared or entered in Maryland, should clear and enter at George-Town, on Potowmack, it would oblige all the ships which sailed from, or were bound to, any other port of Maryland, to clear or enter in some port in *Virginia*. To prevent such a use of the power which the general government now has of *limiting the number of ports* in a State, and *fixing the place or places where they shall be*, we endeavoured to obtain a provision, that the general government should only, in the first instance, have authority to ascertain the *number* of ports proper to be

established in each State, and transmit information thereof to the several States, the legislatures of which, respectively, should have the power to fix the *places* where those ports should be, according to their idea of what would be most advantageous to the *commerce* of their State, and most for the *ease* and *convenience* of their *citizens;* and that the general government should not interfere in the establishment of the *places*, unless the legislature of the State should neglect or refuse so to do; but we could not obtain this alteration.[27]

2.4.75 By the tenth section every State is *prohibited* from *emitting bills of credit*—As it was reported by the committee of detail, the States were *only* prohibited from emitting them *without the consent of Congress;* but the convention was so *smitten* with the *paper money dread*, that they insisted the prohibition should be *absolute*. It was my opinion, Sir, that the States ought not not to be *totally deprived of the right to emit bills of credit*, and that as we had *not given* an *authority* to the *general government* for that purpose, it was the *more necessary* to *retain* it in the *States*—I considered that *this State*, and *some others*, have *formerly received great benefit* from paper emissions, and that if public and private credit should once more be restored, such emissions may *hereafter be equally advantageous;* and further, that it is impossible to foresee that events may not take place which shall render paper money of *absolute necessity;* and it was my opinion, if this power was not to be exercised by a State without the permission of the general government, it ought to be satisfactory even to those who were the *most haunted* by the apprehensions of paper money; I therefore, thought it my duty to vote against this part of the system.[28]

2.4.76 The same section also, puts it out of the power of the States, to make any thing but gold and silver coin a tender in payment of debts, or to pass any law impairing the obligation of contracts.

2.4.77 I considered, Sir, that there might be times of such *great public calamities* and *distress*, and of such *extreme scarcity* of *specie* as should render it the *duty* of a government, for the *preservation* of even the *most valuable part* of its citizens in some measure to interfere in their favour, by passing laws *totally* or *partially stopping* the courts of justice, or authorising the debtor to pay by *instalments*, or by delivering up his property to his creditors at a *reasonable* and *honest* valuation. The times have been such as to render regulations of this kind necessary in most, or all of the States, to prevent the *wealthy creditor* and the *monied man* from *totally* destroying the *poor* though even *industrious* debtor—*Such times* may *again* arrive. I therefore, voted against depriving the States of this power, a power which I am decided they ought to possess, but which I admit ought only to be exercised on very important and urgent occasions.[29] I apprehend, Sir, the principal cause of complaint among the people at large is, the public and private debt with which they are oppressed, and which, in the present scarcity of cash,

threatens them with destruction, unless they can obtain so much indulgence in point of time that by industry and frugality they may extricate themselves.

This *government proposed*, I apprehend, so *far from removing* will greatly *encrease* those complaints, since grasping in its all powerful hand the citizens of the respective States, it will by the imposition of the variety of *taxes, imposts, stamps, excises*, and *other duties, squeeze* from them the little money they may acquire, the hard earnings of their industry, as you would squeeze the juice from an orange, till not a drop more can be extracted, and then let *loose* upon them their *private creditors*, to whose *mercy* it *consigns* them, by *whom* their property is to be *seized upon* and *sold* in this *scarcity* of *specie* at a *sheriff's sale*, where nothing but *ready cash* can be received, for a *tenth part* of its *value*, and *themselves* and their *families* to be consigned to *indigence* and *distress*, without *their governments* having a *power* to *give them a moment's indulgence*, however *necessary* it might be, and however *desirous* to grant them aid. 2.4.78

By this same section, every State is also prohibited from laying any imposts, or duties on imports or exports, without the permission of the general government. It was urged, that as almost all sources of taxation were given to Congress, it would be but reasonable to leave the States the power of bringing revenue into their treasuries, by laying a duty on exports, if they should think proper, which might be so *light* as not to injure or discourage industry, and yet might be productive of considerable revenue—Also, that there might be cases in which it would be proper, for the purpose of encouraging manufactures, to lay duties to prohibit the exportation of raw materials, and even in addition to the duties laid by Congress on *imports* for the sake of *revenue*, to lay a duty to discourage the importation of particular articles into a State, or to enable the *manufacturer here* to supply us on as *good terms* as they could be obtained from a *foreign market;* however, the most we could obtain was, that this power might be exercised by the States with, and *only* with the consent of Congress, and subject to its controul—And so anxious were they to seize on *every shilling* of our money for the general government, that they insisted *even* the *little revenue* that might thus arise, should not be appropriated to the use of the respective States where it was collected, but should be paid into the treasury of the United States; and accordingly it is so determined. 2.4.79

The *second article* relates to the executive—his mode of election—his powers—and the length of time he should continue in office. 2.4.80

On these subjects there was a great diversity of sentiment; many of the members were desirous that the President should be elected for seven years, and not to be eligible a second time; others proposed that he should not be absolutely ineligible, but that he should not be capable of being chosen a second time, until the expiration of a certain number of years—The sup- 2.4.81

porter of the above propositions, went upon the idea that the best security for liberty was a limited duration and a rotation of office in the chief executive department.

2.4.82 There was a party who attempted to have the President appointed during good behaviour, without any limitation as to time, and not being able to succeed in that attempt, they then endeavoured to have him re-eligible without any restraint. It was objected that the choice of a President to continue in office during good behaviour, would be at once rendering our system an elective monarchy; and, that if the President was to be re-eligible without any interval of disqualification, it would amount nearly to the same thing, since with the powers that the President is to enjoy, and the interest and influence with which they will be attended, he will be almost absolutely certain of being re-elected from time to time, as long as he lives: As the propositions were reported by the committee of the whole house, the President was to be chosen for seven years, and not to be eligible at any time after—In the same manner the proposition was agreed to in convention, and so was it reported by the committee of detail, although a variety of attempts were made to alter that part of the system by those who were of a contrary opinion, in which they repeatedly failed; but, Sir, by never losing sight of their object, and choosing a proper time for their purpose, they succeeded at length in obtaining the alteration, which was not made until within the last twelve days before the convention adjourned.[30]

2.4.83 As the propositions were agreed to by the committee of the whole house, the President was to be appointed by the national legislature, and as it was reported by the committee of detail, the choice was to be made by ballot, in such a manner, that the States should have an equal voice in the appointment of this officer, as they, of right, ought to have; but those who wished as far as possible to establish a *national* instead of a *federal* government, made repeated attempts to have the President chosen by the people at large; on this the sense of the convention was taken, I think not less than three times while I was there, and as often rejected; but within the last fortnight of their session, they obtained the alteration in the manner it now stands, by which the large States have a very undue influence in the appointment of the President. There is no case where the States will have an equal voice in the appointment of the President, except where two persons shall have an equal number of votes, and those a majority of the whole number of electors, a case very unlikely to happen, or where no person has a majority of the votes; in these instances the house of representatives are to choose by ballot, each State having an equal voice, but they are confined in the last instance to the five who have the greatest number of votes, which gives the largest States a very unequal chance of having the President chose under their nomination.

2.4.84 As to the Vice-President, that great officer of government, who is in case of death, resignation, removal, or inability of the President, to supply his

place, and be vested with his powers, and who is officially to be the President of the senate, there is no provision by which a majority of the voices of the electors are necessary for his appointment, but after it is decided who is chosen President, that person who has the next greatest number of votes of the electors, is declared to be legally elected to the vice-presidency, so that by this system it is very possible, and not improbable, that he may be appointed by the electors of a *single large State;* and a very undue influence in the senate is given to that State of which the Vice-President is a citizen, since in every question where the senate is divided that State will have two votes, the President having on those occasions a casting voice. Every part of the system which relates to the vice-president, as well as the present mode of electing the President, was introduced and agreed upon after I left Philadelphia.[31]

Objections were made to that part of this article, by which the President is appointed commander in chief of the army and navy of the United States, and of the militia of the several States, and it was wished to be so far restrained, that he should not command in person; but this could not be obtained.[32] The power given to the President of granting reprieves and pardons, was also thought extremely dangerous, and as such opposed—The President thereby has the power of pardoning those who are guilty of treason, as well as of other offences; it was said that no treason was so likely to take place as that in which the President himself might be engaged—The attempt to assume to himself powers not given by the constitution, and establish himself in regal authority; in which attempt a provision is made for him to secure from punishment the creatures of his ambition, the associates and abettors of his treasonable practices, by granting them pardons should they be defeated in their attempts to subvert the constitution. 2.4.85

To that part of this article also, which gives the President a right to *nominate,* and with the consent of the senate to appoint all the officers, civil and military, of the United States, there were considerable opposition—it was said that the person who *nominates,* will always in reality *appoint,* and that this was giving the President a power and influence, which together with the other powers, bestowed upon him, would place him above all restraint or controul. In fine, it was urged, that the President as here constituted, was a KING, in every thing but the name; that though he was to be chosen for a limited time, yet at the expiration of that time if he is not re-elected, it will depend entirely upon his own moderation whether he will resign that authority with which he has once been invested—that from his having the appointment of all the variety of officers in every part of the civil department for the union, who will be very numerous—in them and their connexions, relations, friends and dependants, he will have a formidable host devoted to his interest, and ready to support his ambitious views. That the army and navy, which may be encreased without restraint as to numbers, the officers of which, from the highest to the lowest, are all to be 2.4.86

appointed by him, and dependant on his will and pleasure, and commanded by him in person, will, of course, be subservient to his wishes, and ready to execute his commands; in addition to which, the militia also are entirely subjected to his orders—That these circumstances, combined together, will enable him, when he pleases, to become a *King* in *name*, as well as in *substance*, and establish himself in office not only for his own life, but even if he chooses, to have that authority perpetuated to his family.

2.4.87 It was further observed, that the only appearance of responsibility in the President, which the system holds up to our view, is the provision for impeachment; but that when we reflect that he cannot be impeached but by the house of delegates, and that the members of this house are rendered dependant upon, and unduly under the influence of the President, by being appointable to offices of which he has the sole nomination, so that without his favour and approbation, they cannot obtain them, there is little reason to believe, that a majority will ever concur in impeaching the President, let his conduct be ever so reprehensible, especially too, as the final event of that impeachment will depend upon a different body, and the members of the house of delegates will be certain, should the decision be ultimately in favour of the President, to become thereby the objects of his displeasure, and to bar to themselves every avenue to the emoluments of government.

2.4.88 Should he, contrary to probability, be impeached, he is afterwards to be tried and adjudged by the senate, and without the concurrence of two-thirds of the members who shall be present, he cannot be convicted—This senate being constituted a privy council to the President, it is probable many of its leading and influential members may have advised or concurred in the very measures for which he may be impeached; the members of the Senate also are by the system, placed as unduly under the influence of, and dependant upon the President, as the members of the other branch, since they also are appointable to offices, and cannot obtain them but through the favour of the President—There will be great, important and valuable offices under this government, should it take place, more than sufficient to enable him to hold out the expectation of one of them to *each* of the senators—Under these circumstances, will any person conceive it to be difficult for the President always to secure to himself more than one-third of that body? Or, can it reasonably be believed, that a criminal will be convicted, who is constitutionally empowered to bribe his judges, at the head of whom is to preside on those occasions the chief Justice. Which officer in his original appointment, must be *nominated* by the President, and will therefore, probably, be appointed so much for his eminence in legal knowledge and for his integrity, as from favouritism and influence, since the President knowing that in case of impeachment the chief Justice is to preside at his trial, will naturally wish to fill that office with a person of whose voice and influence he shall consider himself secure. These are reasons to induce a belief, that there will be but little probability of the President ever being either im-

peached or convicted; but it was also urged, that vested with the powers which the system gives him, and with the influence attendant upon those powers, to him it would be of little consequence whether he was impeached or convicted, since he will be able to set both at defiance. These considerations occasioned a part of the convention to give a negative to this part of the system establishing the executive as it is now offered for our acceptance.

2.4.89 By the *third article*, the judicial power of the United States is vested in *one supreme court*, and in such *inferior courts*, as the Congress may from time to time ordain and establish: These courts, and *these only*, will have a right to decide upon the laws of the United States, and all questions arising upon their construction, and in a judicial manner to carry those laws into execution; to which the courts both superior and inferior of the respective States and their judges and other magistrates are rendered incompetent.[33] To the courts of the general government are also *confined* all cases in law or equity, arising under the proposed constitution, and treaties made under the authority of the United States—all cases affecting ambassadors, other public ministers and consuls—all cases of admiralty and maritime jurisdiction—all controversies to which the United States are a party—all controversies between two or more States—between a State and citizens of another State—between citizens of the same State, claiming lands under grants of different States, and between a State or the citizens thereof, and foreign States, citizens, or subjects. Whether therefore, any *laws* or *regulations* of the *Congress*, or *any acts* of *its President* or *other officers* are *contrary to*, or not *warranted by* the constitution, rests *only* with the judges, who are *appointed* by Congress to *determine;* by whose determinations *every State* must be *bound*. Should any question arise between a foreign consul and any of the citizens of the United States, however remote from the seat of empire, it is to be heard before the judiciary of the general government, and in the *first* instance to be heard in the supreme court, however inconvenient to the parties, and however trifling the subject of dispute.

2.4.90 Should the mariners of an American or foreign vessel, while in any American port, have occasion to sue for their wages, or in any other instance a controversy belonging to the admiralty jurisdiction should take place between them and their masters or owners, it is in the courts of the general government the suit must be instituted; and either party may carry it by appeal to its supreme court; the injury to commerce and the oppression to individuals which may thence arise need not be enlarged upon. Should a citizen of Virginia, Pennsylvania, or any other of the United States be indebted to, or have debts due from, a citizen of this State, or any other claim be subsisting on one side or the other, in consequence of commercial or other transactions, it is only in the courts of Congress that either can apply for redress. The case is the same should any claim subsist between

citizens of this State and foreigners, merchants, mariners, and others, whether of a commercial or of any other nature, they must be prosecuted in the same courts; and though in the first instance they may be brought in the inferior, yet an appeal may be made to the supreme judiciary, even from the remotest State in the union.

2.4.91 The inquiry concerning, and trial of every offence against, and breach of the laws of Congress, are also *confined* to its courts; the same courts also have the *sole* right to inquire concerning and try every offence, from the lowest to the highest, committed by the citizens of any other State, or of a foreign nation, against the laws of this State within its territory—and in *all these cases* the decision may be ultimately brought before the supreme tribunal, since the *appellate jurisdiction* extends to *criminal* as well as to civil cases.

2.4.92 And in all those cases where the general government has jurisdiction in civil questions, the proposed constitution *not only* makes *no provision for the trial by jury* in the *first* instance, but by its appellate jurisdiction *absolutely takes away that inestimable privilege*, since it expressly declares the supreme court shall have appellate jurisdiction both as to law and *fact*.—Should therefore, a jury be adopted in the *inferior* court, it would only be a *needless expence*, since on an appeal the *determination* of that *jury, even on questions of fact*, however honest and upright, is to be of *no possible effect*—the supreme court is to take up *all questions of fact*—to *examine the evidence relative* thereto—to *decide upon* them in the *same manner* as if they had *never been tried by a jury*—nor is *trial by jury secured in criminal cases;* it is true, that in the first instance, in the inferior court the trial is to be by jury, in this and in this only, is the difference between criminal and civil cases; but, Sir, the *appellate jurisdiction extends*, as I have observed, to cases *criminal* as well as to civil, and on the *appeal* the *court* is to *decide not only* on the law but on the *fact*, if, therefore, *even* in *criminal* cases the general government is not satisfied with the verdict of the jury, its officer may remove the prosecution to the supreme court, and *there* the *verdict of the jury is to be of no effect*, but the *judges of this court* are to *decide upon the fact* as well as the law, the *same as in civil cases*.[34]

2.4.93 Thus, Sir, *jury trials*, which have ever been the *boast* of the English constitution, which have been by our several *State constitutions* so *cautiously secured* to us—*jury trials* which have so long been considered the *surest barrier* against *arbitrary power*, and the *palladium* of *liberty*,—with the *loss* of *which* the *loss* of our *freedom* may be dated, are *taken away* by the proposed form of government, not *only* in a *great variety* of questions between *individual* and *individual*, but in *every case* whether *civil* or *criminal* arising *under the laws* of the United States, or the *execution* of those laws.—It is *taken away* in *those very cases* where of *all others* it is *most essential for our liberty*, to have it *sacredly guarded* and *preserved*, in *every case*, whether *civil* or *criminal*, between *government* and *its officers* on the

one part, and the *subject* or *citizen* on the other.—Nor was this the effect of inattention, nor did it arise from any real difficulty in establishing and securing jury trials by the proposed constitution, if the convention had wished so to do: but the *same reason* influenced *here* as in the case of the establishment of inferior courts; as they could not trust *State Judges*, so would they not confide in *State juries*.—They alledged that the general government and the State governments would always be at variance; that the citizens of the different States would enter into the views and interests of their respective States, and therefore ought not to be trusted in determining causes in which the general government was any way interested, without giving the general government an opportunity, if it disapproved the verdict of the jury, to appeal, and to have the *facts examined into again* and *decided upon* by *its own judges*, on whom it was thought a reliance might be had by the general government, they being appointed under its authority.

Thus, Sir, in consequence of this *appellate jurisdiction* and its *extension* 2.4.94
to facts as well as to law, every *arbitrary act* of the general government, and every *oppression* of all those *variety of officers* appointed under its authority for the *collection* of *taxes*, *duties*, *impost*, *excise*, and other *purposes*, must be *submitted* to by the *individual*, or must be *opposed* with *little prospect* of *success*, and almost *a certain prospect of ruin*, at least in those cases where the *middle* and *common class* of citizens are interested: Since to *avoid* that *oppression*, or to *obtain redress*, the application must be made to one of the courts of the United States—by good fortune should this application be in the *first* instance attended with success, and should damages be recovered equivalent to the injury sustained, an *appeal* lies to the *supreme court*, in which case the citizen must at once give up his cause, or he must attend to it at the distance of perhaps more than a thousand miles from the place of his residence, and must take measures to procure before that court on the appeal all the evidence necessary to support his action, which even if ultimately prosperous must be attended with a *loss of time*, a *neglect of business*, and an *expence* which will be *greater* than the *original grievance*, and *to which* men in *moderate* circumstances would be *utterly unequal*.

By the *third* section of this article, it is declared, that treason against the 2.4.95
United States, shall consist in levying war against them, or in adhering to their enemies, giving them aid or comfort.

By the *principles* of the American revolution, *arbitrary power may* and 2.4.96
ought to be resisted even by *arms* if necessary—The time may come when it shall be the *duty* of a *State*, in order to preserve itself from the oppression of the general government, to have recourse to the sword—In which case the proposed form of government declares, that the *State* and every of *its citizens* who *act under its authority* are guilty of a direct act of treason; reducing by this provision the different States to this alternative, that they must *tamely* and *passively yield to despotism*, or *their citizens* must *oppose it* at the *hazard* of the *halter* if unsuccessful—and reducing the citizens of the

State which shall take arms, to a situation in which they must be *exposed to punishment*, let them *act as they will*, since if they *obey* the authority of their *State government*, they will be *guilty of treason against the United States*—if they *join* the *general government* they will be *guilty of treason* against *their own State*.

2.4.97 To save the citizens of the respective States from this disagreeable dilemma, and to secure them from being punishable as *traitors* to the *United States*, when *acting* expressly in *obedience* to the authority of *their own State*, I wished to have obtained as an amendment to the third section of this article the following clause: "Provided that no act or acts done by *one* or *more* of the States against the United States, or by *any citizen* of any *one* of the United States *under the authority* of *one* or *more* of the *said States*, shall be deemed *treason*, or *punished as such;* but in case of war being levied by one or more of the States against the United States, the conduct of each party towards the other, and their adherents respectively, shall be regulated by the *laws of war* and of *nations*."[35]

2.4.98 But this provision was not adopted, being too much opposed to the great object of many of the leading members of the convention, which was by all means to *leave the States* at the *mercy* of the *general government*, since they could not succeed in their *immediate* and *entire* abolition.

2.4.99 By the third section of the fourth article, no new State shall be formed or erected within the jurisdiction or any other State, without the consent of the legislature of such State.[36]

2.4.100 There are a number of States which are so circumstanced, with respect to themselves and to the other States, that every principle of justice and sound policy require their dismemberment or division into smaller States.—Massachusetts is divided into two districts, totally separated from each other by the State of New-Hampshire, on the north-east side of which lies the provinces of Main and Sagadohock, more extensive in point of territory, but less populous than old Massachusetts, which lies on the other side of New-Hampshire.: No person can cast their eye on the map of that State but they must in a moment admit, that every argument drawn from convenience, interest, and justice require that the provinces of Main and Sagadohock should be erected into a new State, and that they should not be compelled to remain connected with old Massachusetts under all the inconveniences of their situation.

2.4.101 The State of Georgia is larger in extent than the whole island of Great-Britain, extending from its sea coast to the Missisippi, a distance of eight hundred miles or more; its breadth for the most part, about three hundred miles. The States of North-Carolina and Virginia in the same manner reach from the sea coast unto the Missisippi.

2.4.102 The hardship, the inconvenience, and the injustice of compelling the inhabitants of those States who may dwell on the western side of the mountains and along the Ohio and Missisippi rivers to remain connected with the

inhabitants of those States respectively, on the atlantic side of the mountains, and subject to the same State governments, would be such, as would in my opinion, justify even recourse to arms, to free themselves from, and to shake off, so ignominous a yoke.

This representation was made in convention, and it was further urged, 2.4.103
that the territory of these States were too large, and that the inhabitants thereof would be too much disconnected for a *republican government* to extend to them its benefits, *which* is only suited to a small and compact territory: That a regard also for the peace and safety of the union, ought to excite a desire that those States should become in time divided into separate States, since when their population should become proportioned in any degree to their territory, they would from their strength and power become *dangerous members* of a *federal* government. It was further said, that if the general government was not by its constitution to interfere, the inconvenience would soon remedy itself, for that as the population increased in those States, their legislatures would be obliged to consent to the erection of new States to avoid the evils of a civil war; but as by the proposed constitution the general government is obliged to protect each State against domestic violence, and consequently will be obliged to assist in suppressing such commotions and insurrections as may take place from the struggle to have new States erected, the general government ought to have a power to decide upon the propriety and necessity of establishing or erecting a new State, even without the approbation of the legislature of such States, within whose jurisdiction the new State should be erected, and for this purpose I submitted to the convention the following proposition;—"That on the application of the inhabitants of any district of territory within the limits of any of the States, it shall be lawful for the legislature of the United States, if they shall under all circumstances think it reasonable, to erect the same into a new State, and admit it into the union *without the consent* of the State of which the said district may be a part."[37] And it was said, that we surely might trust the general government with *this power* with *more propriety* than with *many others* with which they were proposed to be entrusted—and that as the general government was bound to suppress all insurrections and commotions which might arise on this subject, it ought to be in the power of the general government to decide upon it, and not in the power of the legislature of a single State, by obstinately and unreasonably opposing the erection of a new State to prevent its taking effect, and thereby extremely to *oppress* that part of its citizens which live remote from, and inconvenient to, the seat of its government, and even to involve the union in war to support its injustice and oppression.—But, upon the vote being taken, Georgia, South-Carolina, North-Carolina, Virginia, Pennsylvania and Massachusetts, were in the *negative*. New-Hampshire, Connecticut, Jersey, Delaware and Maryland, were in the *affirmative*. New-York was absent.[38]

That it was inconsistent with the rights of free and independent States, to 2.4.104

have their territory dismembered without their consent, was the principle argument used by the opponents of this proposition. The truth of the objection we readily admitted, but at the same time, insisted that it was not *more inconsistent* with the rights of free and independent States than *that inequality* of *suffrage* and *power* which the *large States* had *extorted* from the *others;* and that if *the smaller States* yielded up *their rights* in *that instance,* they were *entitled* to demand from the States of extensive territory a *surrender* of their rights in *this instance;* and in a particular manner, as it was *equally necessary* for the true interest and happiness of the *citizens* of *their own States,* as of *the Union.* But, Sir, although when the large States demanded *undue* and *improper* sacrifices to be made to their *pride* and *ambition,* they treated the rights of free States with more contempt than ever a British Parliament treated the rights of her colonial establishments, yet when a *reasonable* and *necessary sacrifice* was asked *from them* they spurned the idea with ineffable disdain. They *then perfectly understood* the *full value* and the *sacred obligation* of *State rights,* and at the least attempt to infringe them *where they were concerned,* they were tremblingly alive and agonized at every pore.

2.4.105 When we reflect how *obstinately* those States contended for that *unjust superiority* of power in the government, which they have *in part* obtained, and for the establishment of this superiority by the constitution. When we reflect that they appeared willing to hazard the existence of the union rather than not to succeed in their unjust attempt—That should their legislatures consent to the erection of new States within their jurisdiction, it would be an immediate sacrifice of that power, to obtain which they appeared disposed to sacrifice every other consideration.

2.4.106 When we further reflect that they *now* have a *motive* for desiring to preserve their territory entire and unbroken, which *they never had before—the gratification of their ambition in possessing and exercising superior power over their sister States*—and that this constitution is to give them the *means* to *effect* this desire *of which* they were *formerly destitute—the whole force of the United States pledged to them for restraining intestine commotions,* and *preserving to them the obedience and subjection of their citizens,* even in the *extremest part of their territory:*—I say, Sir, when we consider these things, it would be too absurd and improbable to deserve a serious answer, should any person suggest that *these States* mean ever *to give their consent* to the *erection of new States within their territory:* Some of them it is true, have been for some time past *amusing* their inhabitants in those districts that wished to be erected into new States, but should this constitution be adopted, *armed with a sword and halter* to compel their obedience and subjection, they will no longer act with indecision; and the State of Maryland may, and probably will be called upon to assist with her wealth and her blood in subduing the inhabitants of Franklin, Kentucky, Vermont, and the provinces of Main and Sagadohock,

and in compelling them to continue in subjection to the States which respectively claim jurisdiction over them.

Let it not be forgotten at the same time, that a great part of the territory of these large and extensive States, which they now hold in possession, and over which they now claim and exercise jurisdiction, were crown lands, unlocated and unsettled when the American revolution took place—Lands which were *acquired* by the *common blood and treasure*, and which *ought* to have been the *common stock*, and for the *common benefit* of the Union. Let it be remembered that the State of Maryland was so deeply sensible of the injustice that these lands should be held by particular States for their own emolument, even at a time when *no superiority* of *authority* or *power* was *annexed to extensive territory*, that in the *midst of the late war* and all the *dangers* which *threatened us, it* withheld for a long time its assent to the articles of confederation for that reason, and when it ratified those articles it entered a *solemn protest* against what it considered so *flagrant injustice:*— But, Sir, the question is not *now* whether those States shall hold that territory unjustly to themselves, but whether by *that act of injustice* they shall *have superiority of power and influence over the other States*, and *have a constitutional right* to *domineer* and *lord it* over them—Nay, more, whether we will *agree* to a *form of government* by which we *pledge* to *those States* the *whole force* of the *union* to *preserve* to them that *extensive territory entire* and *unbroken*, and with *our blood and wealth to assist them*, whenever they please to demand it, to *preserve the inhabitants thereof under their subjection*, for the *purpose* of *encreasing their superiority over us*—of *gratifying their unjust ambition*—in a word, for the *purpose of giving ourselves masters*, and of *rivetting our chains!* 2.4.107

The part of the system, which provides that *no religious test* shall ever be required as a qualification to any office or public trust under the United States, was adopted by a great majority of the convention, and without much debate,—however, there were some members *so unfashionable* as to think that a *belief of the existence of a Deity*, and of a *state of future rewards and punishments* would be some security for the good conduct of our rulers, and that in a Christian country it would be at *least decent* to hold out some distinction between the professors of Christianity and downright infidelity or paganism. 2.4.108

The seventh article declares, that the ratification of *nine States* shall be sufficient for the establishment of this constitution between the States ratifying the same. 2.4.109

It was attempted to obtain a resolve that if seven States, whose votes in the first branch should amount to a majority of the representation in that branch, concurred in the adoption of the system, it should be sufficient, and this attempt was supported on the principle, that a majority ought to govern the minority;[39]—but to this it was objected, that although it was true, after a constitution and form of government is agreed on, in every act done under 2.4.110

and consistent with that constitution and form of government, the act of the majority, unless otherwise agreed in the constitution, should bind the minority, yet it was directly the *reverse* in *originally forming* a constitution, or *dissolving it*—That in originally forming a constitution, it was necessary that *every individual* should agree to it to become bound thereby—and that when *once adopted* it could not be *dissolved* by consent, unless with the consent of *every individual* who was party to the original agreement—That in forming our original federal government *every member* of that government, that is each State, expressly consented to it; that it is a *part* of the *compact* made and entered into in the *most solemn manner*, that there should be no *dissolution* or *alteration* of that federal government without the consent of *every State*, the members of, and parties to the original compact; that therefore *no alteration* could be made by a consent of a *part* of these States, or by the consent of the *inhabitants* of a *part of the States*, which could either *release* the States so consenting, from the obligation they are under to the other States, or which could in any manner become *obligatory* upon those States that should not ratify such alterations. Satisfied of the *truth* of these positions, and not holding ourselves at liberty to *violate* the *compact*, which this state had *solemnly entered into* with the others, by *altering* it in a *different* manner from that which by the same compact is provided and stipulated, a number of the members and among those the *delegation* of *this State* opposed the ratification of this system in *any other manner* than by the *unanimous consent* and agreement of all the States.

2.4.111 By our original articles of confederation any alterations proposed, are in the first place to be *approved* by Congress.—Accordingly as the resolutions were originally adopted by the convention, and as they were reported by the committee of detail, it was proposed that this system should be laid before Congress *for their approbation;* but, Sir, the warm advocates of this system fearing it would not meet with the approbation of Congress, and determined, even though Congress and the respective State legislatures should disapprove the same, to force it upon them, if possible, through the intervention of the people at large, moved to strike out the words "for their approbation" and succeeded in their motion; to which, it being directly in violation of the mode prescribed by the articles of confederation for the alteration of our federal government, a part of the convention, and myself in the number, thought it a duty to give a decided negative.[40]

2.4.112 Agreeable to the articles of confederation entered into in the most *solemn manner*, and for the *observance* of which the States *pledged* themselves to each other, and called upon the *Supreme Being* as a *witness* and *avenger* between them, *no alterations* are to be made in those articles unless after they are approved by Congress, they are agreed to and ratified by the *legislature* of *every* State; but by the resolve of the convention this constitution is not to be ratified by the legislatures of the respective States, but is to

be submitted to conventions chosen by the people, and if ratified by them is to be binding.

This resolve was opposed among others by the delegation of Maryland:—your delegates were of opinion, that as the form of government proposed was, if adopted, most essentially to *alter* the *constitution* of *this State*, and as our constitution had pointed out a mode by which, and by which *only*, alterations were to be made therein, a convention of the people could not be called to agree to and ratify the said form of government without a *direct violation* of our constitution, which it is the duty of every individual in this State to protect and support:—In this opinion all your delegates who were attending were unanimous; I, Sir, opposed it also upon a more extensive ground, as being directly *contrary* to the mode of altering our federal government *established* in our original compact, and as such being a *direct violation* of the mutual faith plighted by the States to each other, I gave it my negative.[41] 2.4.113

I also was of opinion, that the States considered as States, in their political capacity, are the members of a federal government; that the States in their political capacity, or as Sovereignties, are entitled, and *only entitled* originally to agree upon the form of, and submit themselves to, a federal government, and afterwards by mutual consent to dissolve or alter it—That every thing which relates to the formation, the dissolution or the alteration of a *federal government* over States equally free, sovereign and independent is the *peculiar* province of the *States* in their *sovereign* or *political* capacity, in the same manner as what relates to forming alliance or treaties of peace, amity or commerce, and that the people at large in their individual capacity, have no more right to interfere in the one case than in the other:[42] That according to these principles we originally acted in forming our confederation; it was the States as States, by their representatives in Congress, that formed the articles of confederation; it was the States as States, by their legislatures, ratified those articles, and it was there established and provided that the States as States, that is by their legislatures, should agree to any alterations that should hereafter be proposed in the federal government, before they should be binding—and any alterations agreed to in any other manner cannot release the States from the obligation they are under to each other by virtue of the original articles of confederation. The people of the different States never made any objection to the manner the articles of confederation were formed or ratified, or to the mode by which alterations were to be made in that government—with the rights of their respective States they wished not to interfere—Nor do I believe the people in their individual capacity, would ever have expected or desired to have been appealed to on the present occasion, in violation of the rights of their respective States, if the favourers of the proposed constitution, imagining they had a better chance of forcing it to be adopted by a *hasty* appeal to the 2.4.114

people at large, who could not be so good judges of the dangerous consequence, had not insisted upon this mode—nor do these positions in the least interfere with the principle, that all power originates from the people, because when once the people have *exercised their power* in *establishing* and *forming* themselves into a *State government*, it never devolves *back* to them, nor have they a *right* to *resume* or *again to exercise that power* until such events takes place as will amount to a *dissolution* of their *State government:*—And it is an established principle that a dissolution or alteration of a *federal* government doth not dissolve the *State* governments which compose it. It was also my opinion, that upon *principles of sound policy*, the agreement or disagreement to the proposed system ought to have been by the State legislatures, in which case, let the event have been what it would, there would have been but little prospects of the *public peace* being *disturbed* thereby—Whereas the attempt to force down this system, although Congress and the respective State legislatures should disapprove, by appealing to the people, and to procure its establishment in a manner totally unconstitutional, has a tendency to set the *State governments* and their *subjects* at *variance* with each other—to *lessen* the *obligations* of *government*—to *weaken* the *bands* of *society*—to introduce *anarchy* and *confusion*—And to *light* the *torch* of *discord* and *civil war* throughout this continent. All these considerations weighed with me most forcibly against giving my assent to the mode by which it is resolved this system is to be ratified, and were urged by me in opposition to the measure.[43]

2.4.115 I have now, Sir, in discharge of the duty I owe to this house, given such information as hath occured to me, which I consider most material for them to know; and you will easily perceive from this detail that a great portion of that time, which ought to have been devoted calmly and impartially to consider what alterations in our federal government would be most likely to procure and preserve the happiness of the union, was employed in a *violent struggle* on the one side to obtain *all power* and *dominion* in their own hands, and on the other to prevent it; and that the *aggrandizement* of particular States and particular individuals appears to have been much more the object sought after, than the welfare of our country.

2.4.116 The interest of this State, not confined merely to itself, abstracted from all others, but considered relatively; as far as was consistent with the common interest of the other States, I thought it my duty to pursue according to the best opinion I could form of it.

2.4.117 When I took my seat in the convention, I found them attempting to bring forward a system, which I was sure never had entered into the contemplation of those I had the honor to represent, and which upon the fullest consideration, I considered not only injurious to the interest and the rights of this State, but also incompatible with the political happiness and freedom of the States in general; from that time until my business compelled me to leave the convention, I gave it every possible opposition in every stage of its

progression. I opposed the system there with the same explicit frankness with which I have here given you a history of our proceedings, and an account of my own conduct, which in a particular manner I consider you as having a right to know—While there, I endeavoured to act as became a free man, and the delegate of a free State. Should my conduct obtain the approbation of those who appointed me, I will not deny it would afford me satisfaction; but to me that approbation was at most no more than a *secondary* consideration—my *first* was to *deserve* it;—left to myself to act according to the best of my discretion, my conduct should have been the same, had I been even sure your censure would have been my only reward, since I hold it sacredly my duty to dash the cup of poison, if possible, from the hand of a State, or an individual, however anxious the one or the other might be to swallow it.

Indulge me, Sir, in a single observation further:—There are persons who 2.4.118
endeavour to hold up the idea that this system is only opposed by the officers of government;[44] I, Sir, am in that predicament, I have the honor to hold an appointment in this State. Had it been considered any objection, I presume I should not have been appointed to the convention; if it could have any effect on my mind, it would only be that of warming my heart with gratitude, and rendering me more anxious to promote the true interest of that State, which has conferred on me the obligation, and to heighten my guilt had I joined in sacrificing its essential rights: But, Sir, it would be well to remember, that this system is not calculated to *diminish* the *number* or the *value* of *offices;* on the contrary, if adopted, it will be productive of an enormous encrease in their number; many of them will be also of great honor and emoluments. Whether, Sir, in this variety of appointments, and in the scramble for them, I might not have as good a prospect to advantage myself as many others, is not for me to say; but this, Sir, I can say with truth, that so far was I from being influenced in my conduct by interest, or the consideration of office, that I would cheerfully resign the appointment I now hold, I would bind myself never to accept another, either under the general government or that of my own State: I would do more, Sir, so destructive do I consider the present system to the happiness of my country, I would cheerfully sacrifice that share of property with which Heaven has blessed a life of industry,—I would reduce myself to indigence and poverty, and those who are dearer to me than my own existence I would entrust to the care and protection of that Providence who hath so kindly protected myself, if on *those terms only* I could procure my country to reject those chains which are forged for it.[45]

1. See A Landholder, Ford, *Essays* 185–86, and generally Martin's defense of his conduct in letters to the *Maryland Journal* in March and April 1788, Ford, *Essays* 339–83.

2. Farrand I, 20–22 (29 May). Martin took his seat in the Convention on 9 June,

was absent between 7 and 12 August, and left the Convention on 4 September. Farrand III, 589.

3. See Farrand I, 235–37 (13 June).

4. The Jersey proposals were rejected on 19 June. The debate on the seventh resolution, of which Martin gives an account here, occurred on 27–29 June. Farrand I, 436–79. The "warm and decided opposition" to the Virginia proposals was provided preeminently by Martin's own speech extending over two days. On Martin's part in these proceedings, see his and Gerry's exchange with Oliver Ellsworth, Ford, *Essays* 130, 183, 356–57.

5. Cf. James Wilson's important speech of 8 June where he says, inter alia, "Federal liberty is to states, what civil liberty, is to private individuals." Farrand I, 166. For similar Federalist views see McMaster and Stone 189 (Plain Truth); Ford, *Pamphlets* 38, 55 (A Citizen of America), 176–79 (Fabius), 251–52 (Aristides), 373 (Ramsay); *Carlisle Gazette* 24 October 1787 (A Citizen). The concession is as problematic for the Federalists as it is widespread. See Herbert J. Storing, "The 'Other' Federalist Papers," *Political Science Reviewer* Fall 1976.

6. Farrand I, 468 (29 June).

7. The delegate referred to is Abraham Baldwin. This vote was taken on 2 July. Farrand I, 510.

8. Farrand II, 115 (25 July).

9. John Adams, *Defence of the Constitutions of Government of the United States of America* (1786–87) I, letter 53 (John Adams, *Works* IV, 579–80). In his compilation of his grandfather's works, Charles Francis Adams corrected numerous errors in the *Defence* and changed what he regarded as "the original, unmeaning, and arbitrary division of the subject into letters addressed to a friend" to "a more natural one of chapters, embracing the whole or a certain portion of some one topic." Ibid., p. 275. The mode of citation adopted here preserves reference to the "letters" of the early editions, while providing a specific citation to the *Defence* as printed in the *Works*.

10. Martin's meaning here is obscure. Elliot makes it read, "Seventy years are esteemed for the life of a man . . ." (Elliot I, 361), but this makes little sense.

11. Farrand I, 33–35 (30 May); 335–36 (20 June). Regarding the first of these, Martin probably refers to the proposal by Read for a general statement of intention more in line with the principles of the Articles of Confederation, although Martin's language is taken from the nationalists' proposal rather than from Read's.

12. In a reply to A Landholder, Martin says that he has been unable to discover anywhere anything "to warrant or countenance the motley mixture of the system proposed: a system which is an innovation in government of the most extraordinary kind: a system neither wholly federal, nor wholly national—but a strange hotch-potch of both—just so much federal in appearance as to give its advocates in some measure, an opportunity of passing it as such upon the unsuspecting multitude, before they had time and opportunity to examine it, and yet so predominantly national as to put it in the power of its movers, whenever the machine shall be set agoing, to strike out every part that has the appearance of being federal, and to render it wholly and entirely a national government. . . ." Luther Martin letter, *Maryland Journal* 21 March 1788; Ford, *Essays* 367–68. On the confusion of names see Federal Farmer VI, 2.8.72; I, 2.8.10 and n. 9; None of the Well Born Conspirators 3.15.1–2; Columbian Patriot 4.28.4; [Maryland] Farmer 5.1.50; Impartial Examiner 5.14.25–26; Countryman 6.7.4; Smith 6.12.5.

13. See Montesquieu, *The Spirit of Laws* IX, ch. 1; Richard Price, *Observations on the Nature of Civil Liberty* . . . (London and Philadelphia, 1776) sec. 2. For other Anti-Federalist arguments in defense of the small republic, see references in Cato II, 2.6.10–21 and n. 8.

14. See Farrand I, 561 (9 July), 580–88 (11 July); Farrand II, 219–22 (8 August).

15. Elbridge Gerry. Cf. Farrand II, 205–6, 208 (11 June).

16. Such a disproportion was noted, though the other reports of the deliberations do not contain the suggestion that the representation of the larger states was artfully lessened for this reason. See Farrand I, 559–61 (9 July), 566–68 (10 July), 601 (13 July).

17. Farrand II, 217 (12 June), 375–77 (22 June), 386–90 (23 June); Farrand II, 283–90 (14 August), 484 (1 September), 489–92 (3 September).

18. Martin raised a question about this matter on 16 August, but there is no record of any such proposal or reply to it. See Farrand II, 305.

19. Farrand II, 359 (21 August).

20. Farrand II, 308–10 (16 August).

21. This is not a new paragraph in the original.

22. Farrand II, 330 (18 August).

23. Farrand II, 384–88 (23 August); see 330–33 (18 August).

24. See Farrand II, 364–65 (21 August), 369–74 (22 August), 400 (24 August), 414–17 (25 August). The strong antislavery discussion that follows may be compared with other Anti-Federal criticisms of the "slave trade" clause: Centinel III, 2.7.76; Brutus III, 2.9.39; Deliberator 3.13.5; Gentleman in a Neighboring State 4.2.9; Friend to the Rights of the People 4.23.3(5); Consider Arms et al. 4.26.8–15; Phileleutheros 4.27.3–5; Republicus 5.13.14; Countryman from Dutchess County 6.6.2–4, 9–14; Countryman 6.7.6; Adelos, Northampton, Mass., *Hampshire Gazette* 6 February 1788. Some Anti-Federalists conceded the main Federalist defense of the provision, that it was a step towards freedom; cf. the argument of The Federal Farmer XVIII, 2.8.229, and Tench Coxe, Ford, *Pamphlets* 146, and James Wilson, McMaster and Stone 347. But see A Federal Republican (3.6.22) who denied that abolishing the slave trade implied the abolition of slavery. While there was little or no attempt on either side to justify the slave trade (but see Lowndes 5.12.1), the terms of discussion in the South were of course rather different. See Elliot IV, 285 (C. C. Pinckney), 296 (Barnwell); Ford, *Pamphlets* 378 (Ramsay). On the slave trade and the commerce power see Cincinnatus II, 6.1.12 n. 10.

25. See Farrand II, 438 (28 August).

26. Farrand II, 417–18 (25 August).

27. Farrand II, 418 (25 August).

28. Farrand II, 439 (28 August).

29. Ibid.

30. Farrand I, 236 (13 June); Farrand II, 51–121 passim (19 July–26 July), 185–86 (6 August), 496–529 passim (4 September–6 September).

31. Martin left the Convention on 4 September. See above, n. 2.

32. The Paterson plan contained such a prohibition. Farrand I, 244 (15 June).

33. On the question of exclusive versus concurrent jurisdiction, see *The Federalist* no. 82; *Martin* v. *Hunter's Lessee*, 1 Wheat. 333–42, 372–82 (1816); Joseph Story, *Commentaries on the Constitution of the United States*, 2d ed. (Boston 1851) sec. 1754ff.

34. See Democratic Federalist 3.5.6 n. 6.

35. There is no record in Farrand of Martin's having put such a proposal before the Convention. See Farrand II, 345–50 (20 August).

36. Martin's opposition to this provision is, at first sight, inconsistent with his strict federalism (see above, 2.4.29–34). His discussion here (to 2.4.107) deserves particular attention because of the light it throws on the *basis* of Martin's (and the Anti-Federalists') federalism and the *application* of the principles of that federalism under the circumstances that would be created by the Constitution's rejection of these principles.

37. According to both the Journal and Madison's notes, the language (if not the intention) of Martin's proposal was quite different from that given here, namely: "The Legislature of the United States shall have power to erect new States within as well as without the territory claimed by the several States or either of them and admit the same into the Union: Provided that nothing in this Constitution shall be construed to affect the claim of the United States to vacant lands ceded to them by the late treaty of Peace." Farrand II, 457–58, 464 (30 August); see also 454–55, 461–64.

38. According to the Journal, New Hampshire and Connecticut voted against the motion. Farrand II, 458 n. 3, 460, 464 n. 15 (30 August).

39. Farrand II, 475 (31 August). The proposal was Madison's, and he defended it

on the ground that it "would require the concurrence of a majority of both the States and people."

40. Farrand II, 478 (31 August).

41. Farrand I, 341 (20 June); Farrand II, 211–12 (7 August), 475–79 (31 August).

42. Farrand I, 340–41 (20 June), 437 (27 June); Farrand II, 476 (31 August).

43. Farrand II, 475–77 (31 August).

44. The charge that the heart of the opposition to the Constitution was to be found among petty state politicians and "placemen" was very widespread. See McMaster and Stone 88 (An Independent Citizen), 114 (One of the Four Thousand), 149 (Wilson), 449 (A True Whig), 451 (E.G.O.): Ford, *Essays* 144–45 (A Landholder), 216 (A Countryman); Ford, *Pamphlets* 250–51 (Aristides); *The Federalist* no. 1. Anti-Federalist replies to this charge include Centinel II, 2.7.57–58; Yeomanry of Massachusetts 4.19.1–2; Brutus, Jr., 6.3.12; and John Tyler, Elliot III, 640.

45. The pamphlet as originally published concluded with some brief "Remarks on a Standing Army," taken from A [Maryland] Farmer, *Maryland Gazette* 29 February 1788 (5.1 below) and some anonymous "Remarks Relative to a Bill of Rights," which do not add materially to the discussion of this subject in other Anti-Federal writings printed here.

Letter from Edmund Randolph Giving His Reasons for Refusing His Signature To the Proposed Federal Constitution

10 October 1787

Edmund Randolph's political career was marked by early and continued success, though he never entirely escaped something of a reputation for insubstantiality. He was the youngest member of the convention that adopted the Virginia constitution of 1777; he was elected governor of Virginia at the age of 33; he took an active part in the deliberations of the Philadelphia Convention; and he was later chosen by Washington, who knew him well, as the first Attorney General of the United States.

Almost literally, Randolph opened and closed the debates of both the Constitutional Convention and the Virginia ratifying convention. He opened the main business at Philadelphia, presenting the Virginia Plan which served as the basis of its deliberations, and he gave major speeches during the final two days of the convention, explaining his reasons for not signing.[1] In Richmond, Randolph seconded Wilson Nicholas in opening the debate for the proponents of the Constitution and closed the debate with "one parting word" in explanation of his apparently vacillating behavior.[2] Without here trying to resolve the question whether there was an underlying consistency in his behavior—except to say that his own explanation has never been taken seriously enough by historians[3]—Randolph certainly gave the appearance of weakness and inconsistency. While the letter printed here was written to the Virginia House of Delegates on 10 October, it was not sent. Later in 1787, it was printed in Richmond as a pamphlet, with Randolph's permission, by a group of Anti-Federalists;[4] and in the early months of 1788 it was reprinted in newspapers in Virginia and around the country.[5] The pamphlet version is printed here. The letter was criticized by A Plain Dealer, who was mainly concerned to show Randolph's inconsistency and who was supposed by Randolph to have been Spencer Roane.[6]

But is this letter really part of the Anti-Federal corpus? In many respects, surely, the principles expressed in it are more Federal than Anti-Federal. One Federalist writer remarked that Randolph "appears to surmount all the

leading objections which have been so profusely raised against the Constitution—he advocates with great ingenuity and precision all its essential principles, and then (to the astonishment of his friends, and as a strong instance of the weakness of human reason) he appears to refuse his assent on some of the lesser and very immaterial parts of its structure."[7] Nevertheless, Randolph did refuse to sign the Constitution; he expressed objections to it which were relied on by the opponents and which had to be answered by the proponents. He was unusual among Anti-Federalists in the strength of his (as it were) Federal principles, but he was by no means unique.

The first two-thirds of Randolph's letter is similar to the speech he gave at the outset of the Philadelphia Convention. He describes the objects of the Union as protection against foreign hostility, protection against domestic commotion, and promotion of trade and prosperity. He shows how incapable is the government under the Articles to secure these objects, because of its weaknesses in the military, taxation, and commercial fields. The government is unable to reach directly to the individual to enforce national engagements with foreign powers, to arbitrate effectively among the states, to protect the states against domestic violence, and to stand superior to ordinary laws. He concludes that an essential change in the government is necessary; "the confederation must be thrown aside." The general government must be remodeled to make it a fit instrument for increased powers, and this new government should "grow out of a consolidation of the union"—that term so generally hated by the Anti-Federalists—"so far, as the circumstances of the states will allow."

The alternatives to consolidation are disunion or partial confederacies; and Randolph describes, with great force, the dangers of any kind of disunion, especially to the South. Preservation of the Union, Randolph always insisted, was the great end guiding all of his political action.[8]

Randolph concludes by arguing in favor of a second convention, to consult again the opinions of the people, thus both improving the constitution and strengthening the indispensable popular support for the constitution ultimately decided upon. In particular, he would modify some of the aristocratic qualities that he thought had been introduced into the plan as the Philadelphia deliberations proceeded. In addition to clearing up ambiguities, he suggests making the President ineligible after a number of years and reducing his power; drawing clearer lines between the power of the Congress and the powers of the states, reducing the powers of the Senate regarding treaties and impeachments and of Congress in determining their salaries and defining the judicial powers.

1. Farrand I, 18–28 (29 May); Farrand II, 631 (15 September), 644–46 (17 September).

2. Elliot III, 23–29, 652.

3. See, however, Moncure Daniel Conway, *Omitted Chapters of History Disclosed in the Life and Papers of Edmund Randolph* (New York 1888) chs. 9–12; and Burnet

V. Davis, "Edmund Randolph and the U.S. Constitution: A Study in Statesmanship" (M.A. thesis, University of Chicago, 1969), where a useful beginning has been made.

4. Evans, *Early American Imprints* no. 20669. See Conway, *Omitted Chapters of History* 97–98. Randolph's letter to Washington, 27 December 1787, Bancroft, *History of the Formation of the Constitution* II, 455.

5. The first newspaper publications were in the *Virginia Independent Chronicle* (2 January 1788) and the Richmond *Virginia Gazette* (3 and 10 January 1788).

6. Ford, *Essays* 385–92.

7. *The Country Journal and the Poughkeepsie Advertiser* 22 April 1788, a review by A Federalist of an Anti-Federalist pamphlet entitled *Observations on the Proposed Constitution for the U.S.A., clearly showing it to be a complete System of Aristocracy and Tyranny. . . .* As the reviewer pointed out, the Anti-Federalist editor of the pamphlet omitted Randolph's penultimate paragraph, in which he affirmed his commitment to a strong energetic government and to union and his intention to support the Constitution even if no amendments were attained. See below, 2.5.43. Cf. Madison to Washington, 25 January 1788, *Documentary History of the Constitution* IV, 485.

8. Elliot III, 652.

To the Printer

Sir,

The inclosed letter contains the reasons of his Excellency Governor Randolph for refusing his signature to the proposed Foederal Constitution of Government submitted to the several states by the late Convention at Philadelphia. The manner in which we have obtained it, and the authority by which we convey it to the Public, through the channel of your Press, will be explained by the letter herewith sent to you, which, we request may precede his Excellency's letter to the Speaker of the House of Delegates in your publication of them.

M. Smith.
Charles M. Thruston.
John H. Briggs.
Mann Page, jun.

To his Excellency Edmund Randolph, Esquire.

Sir, *December 2, 1787.*

It has been reported in various parts of the state, that the reasons which governed you in your disapprobation of the proposed Foederal Constitution, no longer exist; and many of the people of this Commonwealth have wished to know what objections could induce you to refuse your signature to a measure so flattering to many principal characters in America, and which is so generally supposed to contain the seeds of prosperity and happiness to the United States.

We are satisfied, sir, that the time is passed, when you might with pro-

priety have been requested to communicate your sentiments to the General Assembly on this subject; but, as you have been pleased to favor us with your observations in private, and we conceive they would not only afford satisfaction to the public, but also be useful by the information and instruction they will convey, we hope, you can have no objection to enable us to make them public through the medium of the Press. We have the honor to be, with respectful esteem, Sir, your most obedient servants,

M. Smith
Charles M. Thruston
John H. Briggs
Mann Page, jun.

To M. Smith, Charles M. Thruston, John H. Briggs, and Mann Page, jun. Esquires.

Gentlemen, *December 10, 1787.*

Your favor of the second instant, requesting permission to publish my letter on the new Constitution, gives me an opportunity of making known my sentiments, which, perhaps I ought not to decline. It has been written ever since its date, and was intended for the General Assembly. But I have hitherto been restrained from sending it to them, by motives of delicacy arising from two questions depending before that body, the one respecting the Constitution, the other myself. At this day too I feel an unwillingness to bring it before the Legislature, lest in the diversity of opinion, I should excite a contest unfavorable to that harmony with which I trust the great subject will be discussed. I therefore submit the publication of the letter to your pleasure.

I beg leave however, to remind you, that I have only mentioned my objections to the Constitution in general terms, thinking it improper, and too voluminous, to explain them at full length. But it is my purpose to go at large into the Constitution when a fit occasion shall present itself.

I am, Gentlemen, with the greatest respect, your most obedient servant,

Edmund Randolph

A Letter of His Excellency Edmund Randolph, Esquire, on the Federal Constitution

Richmond, October 10, 1787.

Sir,

2.5.1 The Constitution, which I inclosed to the General Assembly in a late official letter, appears without my signature. This circumstance, although

trivial in its own nature, has been rendered rather important to myself at least, by being misunderstood by some, and misrepresented by others—As I disdain to conceal the reasons for with-holding my subscription, I have always been, still am, and ever shall be, ready to proclaim them to the world. To the legislature therefore, by whom I was deputed to the Foederal Convention, I beg leave now to address them; affecting no indifference to public opinion, but resolved not to court it by an unmanly sacrifice of my own judgment.

As this explanation will involve a summary, but general review of our foederal situation, you will pardon me, I trust, although I should transgress the usual bounds of a letter. 2.5.2

Before my departure for the Convention, I believed, that the confederation was not so eminently defective, as it had been supposed. But after I had entered into a free communication with those, who were best informed of the condition and interest of each state; after I had compared the intelligence derived from them, with the properties, which ought to characterize the government of our union, I became persuaded, that the confederation was destitute of every energy, which a constitution of the United States ought to possess.[1] 2.5.3

For the objects proposed by its institution were, that it should be a shield against foreign hostility, and a firm resort against domestic commotion: that it should cherish trade, and promote the prosperity of the states under its care. 2.5.4

But these are not among the attributes of our present union. Severe experience under the pressure of war—a ruinous weakness, manifested since the return of peace—and the contemplation of these dangers, which darken the future prospect, have condemned the hope of grandeur and of safety under the auspices of the confederation. 2.5.5

In the exigencies of war indeed the history of its effects is short; the final ratification having been delayed until the beginning of the year 1781. But howsoever short, this period is distinguished by melancholy testimonies, of its inability to maintain in harmony the social intercourse of the states, to defend Congress against incroachments on their rights, and to obtain by requisitions supplies to the foederal treasury or recruits to the foederal armies. I shall not attempt an enumeration of the particular instances; but leave to your own remembrance and the records of Congress, the support of these assertions. 2.5.6

In the season of peace too not many years have elapsed; and yet each of them has produced fatal examples of delinquency, and sometimes of pointed opposition to foederal duties. To the various remonstrances of Congress I appeal for a gloomy, but unexaggerated narrative of the injuries, which our faith, honor and happiness have sustained by the failures of the states. 2.5.7

But these evils are past; and some may be led by an honest zeal to conclude, that they cannot be repeated. Yes, sir; they will be repeated as 2.5.8

long as the confederation exists, and will bring with them other mischiefs, springing from the same source, which cannot be yet foreseen in their full array of terror.

2.5.9 If we examine the constitutions, and laws of the several states, it is immediately discovered, that the law of nations is unprovided with sanctions in many cases, which deeply affect public dignity and public justice. The letter, however of the confederation does not permit Congress to remedy these defects, and such an authority, although evidently deducible from its spirit, cannot, without a violation of the second article, be assumed. Is it not a political phaenomenon, that the head of the confederacy should be doomed to be plunged into war, from its wretched impotency to check offences against this law? And sentenced to witness in unavailing anguish the infraction of their engagements to foreign sovereigns?

2.5.10 And yet this is not the only grievous point of weakness. After a war shall be inevitable, the requisitions of Congress for quotas of men or money, will again prove unproductive and fallacious. Two causes will always conspire to this baneful consequence.

1. No government can be stable, which hangs on human inclination alone, unbiassed by the fear of coercion; and 2. from the very connection between states bound to proportionate contributions,—jealousies and suspicions naturally arise, which at least chill the ardor, if they do not excite the murmurs of the whole. I do not forget indeed, that by one sudden impulse our part of the American continent has been thrown into a military posture, and that in the earlier annals of the war, our armies marched to the field on the mere recommendations of Congress. But ought we to argue from a contest, thus signalized by the magnitude of its stake, that as often as a flame shall be hereafter kindled, the same enthusiasm will fill our legions? or renew them, as they may be thinned by losses?

2.5.11 If not, where shall we find protection? Impressions, like those, which prevent a compliance with requisitions of regular forces, will deprive the American republic of the services of militia. But let us suppose, that they are attainable, and acknowledge, as I always shall, that they are the natural support of a free government. When it is remembered, that in their absence agriculture must languish; that they are not habituated to military exposures and the rigor of military discipline, and that the necessity of holding in readiness successive detachments, carries the expence far beyond that of inlistments—this resource ought to be adopted with the caution.

2.5.12 As strongly too am I persuaded, that requisitions for money will not be more cordially received. For besides the distrust, which would prevail with respect to them also; besides the opinion, entertained by each state of its own liberality and unsatisfied demands against the United States, there is another consideration, not less worthy of attention. The first rule for determining each quota was the value of all land granted or surveyed, and of the buildings and improvements thereon. It is no longer doubted, that an

equitable, uniform mode of estimating that value, is impracticable; and therefore twelve states have substituted the number of inhabitants under certain limitations, as the standard according to which money is to be furnished. But under the subsisting articles of the union, the assent of the thirteenth state is necessary, and has not yet been given. This does of itself lessen the hope of procuring a revenue for foederal uses; and the miscarriage of the impost almost rivets our despondency.

Amidst these disappointments, it would afford some consolation, if when 2.5.13
rebellion shall threaten any state, an ultimate asylum could be found under the wing of Congress. But it is at least equivocal, whether they can intrude forces into a state, rent asunder by civil discord, even with the purest solicitude for our foederal welfare, and on the most urgent intreaties of the state itself. Nay the very allowance of this power would be pageantry alone, from the want of money and of men.

To these defects of Congressional power, the history of man has sub- 2.5.14
joined others, not less alarming. I earnestly pray, that the recollection of common sufferings, which terminated in common glory, may check the sallies of violence, and perpetuate mutual friendship between the states. But I cannot presume, that we are superior to those unsocial passions, which under like circumstances have infested more ancient nations.[2] I cannot presume, that through all time, in the daily mixture of American citizens with each other, in the conflicts for commercial advantages, in the discontents, which the neighborhood of territory has been seen to engender in other quarters of the globe, and in the efforts of faction and intrigue—thirteen distinct communities under no effective superintending controul (as the United States confessedly now are notwithstanding the bold terms of the confederation) will avoid a hatred to each other deep and deadly.

In the prosecution of this inquiry we shall find the general prosperity to 2.5.15
decline under a system thus unnerved. No sooner is the merchant prepared for foreign ports with the treasures, which this new world kindly offers to his acceptance, than it is announced to him, that they are shut against American shipping, or opened under oppressive regulations. He urges Congress to a counter-policy, and is answered only by a condolence on the general misfortune. He is immediately struck with the conviction, that until exclusion shall be opposed to exclusion and restriction to restriction, the American flag will be disgraced. For who can conceive, that thirteen legislatures, viewing commerce under different relations, and fancying themselves, discharged from every obligation to concede the smallest of their commercial advantages for the benefit of the whole, will be wrought into a concert of action in defiance of every prejudice? Nor is this all:—Let the great improvements be recounted, which have inriched and illustrated Europe: Let it be noted, how few those are, which will be absolutely denied to the United States, comprehending within their boundaries the choicest blessings of climate, soil and navigable waters; then let the most sanguine

patriot banish, if he can, the mortifying belief, that all these must sleep, until they shall be roused by the vigour of a national government.

2.5.16 I have not exemplified the preceding remarks by minute details; because they are evidently fortified by truth, and the consciousness of United America. I shall therefore no longer deplore the unfitness of the confederation to secure our peace; but proceed, with a truly unaffected distrust of my own opinions, to examine what order of powers the government of the United States ought to enjoy? how they ought to be defended against incroachment? whether they can be interwoven in the confederation without an alteration of its very essence? or must be lodged in new hands? shewing at the same time the convulsions, which seem to await us from a dissolution of the union or partial confederacies.

2.5.17 To mark the kind and degree of authority, which ought to be confided to the government of the United States is no more than to reverse the description, which I have already given, of the defects of the confederation.

2.5.18 From thence it will follow, that the operations of peace and war will be clogged without regular advances of money, and that these will be slow indeed, if dependent on supplication alone. For what better name do requisitions deserve, which may be evaded or opposed, without the fear of coercion? But although coercion is an indispensable ingredient, it ought not to be directed against a state, as a state; it being impossible to attempt it except by blockading the trade of the delinquent, or carrying war into its bowels.[3] Even if these violent schemes were eligible, in other respects both of them might perhaps be defeated by the scantiness of the public chest; would be tardy in their complete effect, as the expence of the land and naval equipments must be first reimbursed; and might drive the proscribed state into the desperate resolve of inviting foreign alliances. Against each of them lie separate unconquerable objections. A blockade is not equally applicable to all the states, they being differently circumstanced in commerce and in ports; nay an excommunication from the privileges of the union would be vain, because every regulation or prohibition may be easily eluded under the rights of American citizenship, or of foreign nations. But how shall we speak of the intrusion of troops? shall we arm citizens against citizens, and habituate them to shed kindred blood? shall we risque the inflicting of wounds, which will generate a rancour never to be subdued? would there be no room to fear, that an army accustomed to fight, for the establishment of authority, would salute an emperor of their own? Let us not bring these things into jeopardy. Let us rather substitute the same process, by which individuals are compelled to contribute to the government of their own states. Instead of making requisitions to the legislatures, it would appear more proper, that taxes should be imposed by the foederal head, under due modifications and guards: that the collectors should demand from the citizens their respective quotas, and be supported as in the collection of ordinary taxes.

It follows too, that, as the general government will be responsible to foreign nations, it ought to be able to annul any offensive measure, or inforce any public right. Perhaps, among the topics on which they may be aggrieved or complain, the commercial intercourse, and the manner, in which contracts are discharged, may constitute the principal articles of clamour. 2.5.19

It follows too, that the general government ought to be the supreme arbiter for adjusting every contention among the states. In all their connections therefore with each other, and particularly in commerce, which will probably create the greatest discord, it ought to hold the reins.

It follows too, that the general government ought to protect each state against domestic as well as external violence.

And lastly it follows, that through the general government alone can we ever assume the rank, to which we are entitled by our resources and situation.

Should the people of America surrender these powers, they can be paramount to the constitutions, and ordinary acts of legislation, only by being delegated by them. I do not pretend to affirm, but I venture to believe, that if the confederation had been solemnly questioned in opposition to our constitution or even to one of our laws, posterior to it, it must have given way. For never did it obtain with us a higher ratification, than a resolution of Assembly in the daily form. 2.5.20

This will be one security against incroachment. But another not less effectual is, to exclude the individual states from any agency in the national government, as far as it may be safe, and their interposition may not be absolutely necessary. 2.5.21

But now, sir, permit me to declare, that in my humble judgment the powers by which alone the blessings of a general government can be accomplished, cannot be interwoven in the confederation without a change of its very essence; in other words, that the confederation must be thrown aside. This is almost demonstrable from the inefficacy of requisitions and from the necessity of converting them into acts of authority. My suffrage, as a citizen, is also for additional powers. But to whom shall we commit these acts of authority, these additional powers? To Congress?—When I formerly lamented the defects in the jurisdiction of Congress, I had no view to indicate any other opinion, than that the foederal head ought not to be so circumscribed. For free as I am at all times to profess my reverence for that body, and the individuals, who compose it, I am yet equally free to make known my aversion to repose such a trust in a tribunal so constituted. My objections are not the visions of theory, but the result of my own observation in America, and of the experience of others abroad. 1. The legislative and executive are concentred in the same persons. This, where real power exists, must eventuate in tyranny. 2. The representation of the states bears no proportion to their importance. This is an unreasonable subjection of the 2.5.22

will of the majority to that of the minority. 3. The mode of election and the liability to be recalled may too often render the delegates rather partizans of their own states, than representatives of the union. 4. Cabal and intrigue must consequently gain an ascendancy in a course of years. 5. A single house of legislation will some times be precipitate, perhaps passionate. 6. As long as seven states are required for the smallest, and nine for the greatest votes, may not foreign influence at some future day insinuate itself, so as to interrupt every active exertion? 7. To crown the whole, it is scarcely within the verge of possibility, that so numerous an assembly should acquire that secrecy, dispatch, and vigour, which are the test of excellence in the executive department.

2.5.23 My inference from these facts and principles is, that the new powers must be deposited in a new body, growing out of a consolidation of the union, as far as the circumstances of the states will allow. Perhaps, however, some may meditate its dissolution, and others partial confederacies.

2.5.24 The first is an idea awful indeed and irreconcileable with a very early, and hitherto uniform conviction, that without union we must be undone. For before the voice of war was heard, the pulse of the then colonies was tried and found to beat in unison. The unremitted labour of our enemies was to divide, and the policy of every Congress to bind us together. But in no example was this truth more clearly displayed, than in the prudence, with which independence was unfolded to the sight, and in the forbearance to declare it, until America almost unanimously called for it. After we had thus launched into troubles, never before explored, and in the hour of heavy distress, the remembrance of our social strength not only forbade despair, but drew from Congress the most illustrious repetition of their settled purpose to despise all terms, short of independence.

2.5.25 Behold then, how successful and glorious we have been, while we acted in fraternal concord. But let us discard the illusion, that by this success and this glory the crest of danger has irrecoverably fallen. Our governments are yet too youthful to have acquired stability from habit. Our very quiet depends upon the duration of the union. Among the upright and intelligent, few can read without emotion the future fate of the states, if severed from each other. Then shall we learn the full weight of foreign intrigue—Then shall we hear of partitions of our country. If a prince, inflamed by the lust of conquest, should use one state, as the instrument of enslaving others—if every state is to be wearied by perpetual alarms, and compelled to maintain large military establishments—if all questions are to be decided by an appeal to arms, where a difference of opinion cannot be removed by negotiation—in a word, if all the direful misfortunes, which haunt the peace of rival nations, are to triumph over the land—for what have we contended? Why have we exhausted our wealth? Why have we basely betrayed the heroic martyrs of the federal cause?

But dreadful as the total dissolution of the union is to any mind, I entertain no less horror at the thought of partial confederacies.[4] I have not the least ground for supposing, that an overture of this kind would be listened to by a single state: and the presumption is, that the politics of the greater part of the states flow from the warmest attachment to an union of the whole. If however a lesser confederacy could be obtained, by Virginia, let me conjure my countrymen well to weigh the probable consequences, before they attempt to form it. 2.5.26

On such an event, the strength of the union would be divided into two or perhaps three parts. Has it so increased since the war as to be divisible?—and yet remain sufficient for our happiness? 2.5.27

The utmost limit of any partial confederacy, which Virginia could expect to form, would comprehend only the three southern states, and her nearest northern neighbour. But they, like ourselves, are diminished in their real force, by the mixture of an unhappy species of population.

Again may I ask, whether the opulence of the United States has been augmented since the war? This is answered in the negative by a load of debt, and the declension of trade. 2.5.28

At all times must a southern confederacy support ships of war, and soldiery. As soon would a navy move from the forest, and an army spring from the earth, as such a confederacy, indebted, impoverished in its commerce, and destitute of men, could, for some years at least provide an ample defence for itself.

Let it not be forgotten, that nations, which can inforce their rights, have large claims against the United States, and that the creditor may insist on payment from any one of them. Which of them would probably be the victim? The most productive and the most exposed. When vexed by reprisals or war, the southern states will sue for alliances on this continent or beyond sea. If for the former, the necessity of an union of the whole is decided. If for the latter, America will, I fear, re-act the scenes of confusion and bloodshed, exhibited among most of those nations, which have, too late, repented the folly of relying on auxiliaries. 2.5.29

Two or more confederacies cannot but be competitors for power. The ancient friendship between the citizens of America, being thus cut off, bitterness and hostility will succeed in its place. In order to prepare against surrounding danger, we shall be compelled to vest somewhere or other power approaching near to a military government. 2.5.30

The annals of the world have abounded so much with instances of a divided people, being a prey to foreign influence, that I shall not restrain my apprehensions of it, should our union be torn assunder. The opportunity of insinuating it will be multiplied in proportion to the parts, into which we may be broken.

In short, sir, I am fatigued with summoning up to my imagination the

miseries, which will harrass the United States, if torn from each other, and which will not end, until they are superseded by fresh mischiefs under the yoke of a tyrant.

2.5.31 I come therefore to the last and perhaps only refuge in our difficulties, a consolidation of the union, as far as circumstances will permit. To fulfil this desirable object, the constitution was framed by the Foederal Convention. A quorum of eleven states, and the only member from a twelfth have subscribed it; Mr. MASON of Virginia, Mr. GERRY of Massachusetts and myself having refused to subscribe.[5]

2.5.32 Why I refused, would, I hope, be solved to the satisfaction of those, who know me, by saying that a sense of duty commanded me thus to act. It commanded me, sir, for believe me, that no event of my life ever occupied more of my reflection. To subscribe seemed to offer no inconsiderable gratification; since it would have presented me to the world, as a fellow-labourer with the learned and zealous statesmen of America. But it was far more interesting to my feelings, that I was about to differ from three of my colleagues; one of whom is, to the honor of the country, which he has saved, imbosomed in their affections, and can receive no praise from the highest lustre of language; the other two of whom have been long inrolled among the wisest and best lovers of the commonwealth; and the unshaken and intimate friendship of all of whom I have ever prized, and still do prize, as among the happiest of all my acquisitions. I was no stranger to the reigning partiality for the members, who composed the convention; and had not the smallest doubt, that from this cause, and from the ardor for a reform of government, the first applauses at least would be loud, and profuse. I suspected too, that there was something in the human breast, which for a time would be apt to construe a temperateness in politicks into an enmity to the union. Nay I plainly foresaw, that in the dissensions of parties, a middle line would probably be interpreted into a want of enterprize and decision.[6] But these considerations, how seducing soever, were feeble opponents to the suggestions of my conscience. I was sent to exercise my judgment, and to exercise it was my fixed determination; being instructed by even an imperfect acquaintance with mankind, that self approbation is the only true reward, which a political career can bestow, and that popularity would have been but another name for perfidy, if to secure it, I had given up the freedom of thinking for myself.

2.5.33 It would have been a peculiar pleasure to me, to have ascertained, before I left Virginia, the temper and genius of my fellow-citizens, considered relatively to a government, so substantially differing from the confederation, as that, which is now submitted. But this was for many obvious reasons impossible: and I was thereby deprived of what I thought the necessary guides.

2.5.34 I saw however that the confederation was tottering from its own weak-

ness, and that the sitting of the convention was a signal of its total insufficiency. I was therefore ready to assent to a scheme of government, which was proposed, and which went beyond the limits of the confederation, believing, that without being too extensive it would have preserved our tranquility, until that temper and that genius should be collected.

But when the plan which is now before the General Assembly, was on its passage through the convention, I moved, that the state-conventions should be at liberty to amend, and that a second general Convention should be holden to discuss the amendments, which should be suggested by them. This motion was in some measure justified by the manner, in which the confederation was forwarded originally, by Congress to the state-legislatures, in many of which amendments were proposed, and those amendments were afterwards examined in Congress. Such a motion was doubly expedient here, as the delegation of so much more power was sought for. But it was negatived. I then expressed my unwillingness to sign. My reasons were the following.[7] 2.5.35

1. It is said in the resolutions, which accompany the constitution, that it is to be submitted to a convention of Delegates, chosen in each state by the people thereof, for their assent and ratification. The meaning of these terms is allowed universally to be, that the Convention must either adopt the constitution in the whole, or reject it in the whole, and is positively forbidden to amend. If therefore I had signed, I should have felt myself bound to be silent as to amendments, and to endeavor to support the constitution without the correction of a letter. With this consequence before my eyes and with a determination to attempt an amendment, I was taught by a regard for consistency not to sign. 2.5.36

2. My opinion always was, and still is, that every citizen of America, let the crisis be what it may, ought to have a full opportunity to propose through his representatives any amendment, which in his apprehension tends to the public welfare—By signing I should have contradicted this sentiment.

3. A constitution ought to have the hearts of the people on its side. But if at a future day it should be burthensome, after having been adopted in the whole, and they should insinuate, that it was in some measure forced upon them, by being confined to the single alternative of taking or rejecting it altogether, under my impressions and with my opinions I should not be able to justify myself had I signed.

4. I was always satisfied, as I have now experienced, that this great subject, would be placed in new lights and attitudes by the criticism of the world, and that no man can assure himself, how a constitution will work for a course of years, until at least he shall have heard the observations of the people at large. I also fear more from inaccuracies in a constitution, than from gross errors in any other composition: because our dearest interests

are to be regulated by it, and power, if loosely given, especially where it will be interpreted with great latitude, may bring sorrow in its execution. Had I signed with these ideas, I should have virtually shut my ears against the information, which I ardently desired.

5. I was afraid, that if the Constitution was to be submitted to the people, to be wholly adopted or wholly rejected by them, they would not only reject it, but bid a lasting farewell to the union. This formidable event I wished to avert, by keeping myself free to propose amendments, and thus, if possible, to remove the obstacles to an effectual government. But it will be asked, whether all these arguments were not well weighed in Convention. They were, sir, and with great candor. Nay, when I called to mind the respectability of those, with whom I was associated, I almost lost confidence in these principles. On other occasions I should chearfully have yielded to a majority; on this the fate of thousands, yet unborn, enjoined me not to yield, until I was convinced—

2.5.37 Again may I be asked, why the mode pointed out in the Constitution for its amendment, may not be a sufficient security against its imperfections, without now arresting it in its progress?—My answers are, 1. that it is better to amend, while we have the Constitution in our power, while the passions of designing men are not yet enlisted and while a bare majority of the states may amend, than to wait for the uncertain assent of three fourths of the states. 2. That a bad feature in government becomes more and more fixed every day. 3. That frequent changes of a Constitution even if practicable ought not to be wished, but avoided as much as possible: and 4. That in the present case it may be questionable, whether, after the particular advantages of its operation shall be discerned, three fourths of the states can be induced to amend.

2.5.38 I confess, that it is no easy task, to devise a scheme which shall be suitable to the views of all. Many expedients have occurred to me, but none of them appear less exceptionable than this: that if our Convention should choose to amend, another federal convention be recommended: that in that federal Convention the amendments proposed by this or any other state, be discussed; and if incorporated in the constitution or rejected, or if a proper number of the other states should be unwilling to accede to a second Convention, the constitution be again laid before the same state-conventions, which shall again assemble on the summons of the Executives, and it shall be either wholly adopted, or wholly rejected, without a further power of amendment. I count such a delay, as nothing in comparison with so grand an object: especially too as the privilege of amending must terminate after the use of it once.

2.5.39 I should now conclude this letter, which is already too long, were it not incumbent on me from having contended for amendments, to set forth the particulars, which I conceive to require correction. I undertake this with

reluctance; because it is remote from my intentions to catch the prejudices or prepossessions of any man. But as I mean only to manifest, that I have not been actuated by caprice, and now to explain every objection at full length would be an immense labour, I shall content myself with enumerating certain heads, in which the constitution is most repugnant to my wishes.[8]

The two first points are the equality of suffrage in the Senate, and the submission of commerce to a mere majority in the legislature, with no other check than the revision of the President. I conjecture that neither of these things can be corrected; and particularly the former; without which we must have risen perhaps in disorder. 2.5.40

But I am sanguine in hoping, that in every other, justly obnoxious clause, Virginia, will be seconded by a majority of the states. I hope, that she will be seconded 1. in causing all ambiguities of expression to be precisely explained: 2. in rendering the President ineligible after a given number of years: 3. in taking from him either the power of nominating to the judiciary offices, or of filling up vacancies which therein may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session: 4. in taking from him the power of pardoning for treason, at least before conviction: 5. in drawing a line between the powers of Congress and individual states; and in defining the former; so as to leave no clashing of jurisdictions nor dangerous disputes: and to prevent the one from being swallowed up by the other, under the cover of general words, and implication: 6. in abridging the power of the Senate to make treaties the supreme laws of the land: 7. in providing a tribunal instead of the Senate for the impeachment of Senators: 8. in incapacitating the Congress to determine their own salaries: and often limiting and defining the judicial power. 2.5.41

The proper remedy must be consigned to the wisdom of the convention: and the final step, which Virginia shall pursue, if her overtures shall be discarded, must also rest with them. 2.5.42

But as I affect neither mystery nor subtilty, in politics, I hesitate not to say, that the most fervent prayer of my soul is the establishment of a firm, energetic government; that the most inveterate curse, which can befal us, is a dissolution of the union; and that the present moment, if suffered to pass away unemployed, can never be recalled. These were my opinions, while I acted as a Delegate; they sway me, while I speak as a private citizen. I shall therefore cling to the union, as the rock of our salvation, and urge Virginia to finish the salutary work, which she has begun. And if after our best efforts for amendments they cannot be obtained, I scruple not to declare, (notwithstanding the advantage, which such a declaration may give to the enemies of my proposal,) that I will, as an individual citizen, accept the constitution; because I would regulate myself by the spirit of America. 2.5.43

You will excuse me, sir, for having been thus tedious. My feelings and duty demanded this exposition: for through no other channel could I rescue 2.5.44

my omission to sign from misrepresentation, and in no more effectual way could I exhibit to the General Assembly an unreserved history of my conduct.

I have the honor, Sir, to be, with great respect, your most obedient servant,

Edmund Randolph

The Honorable the Speaker
of the House of Delegates.

1. See Randolph's speech at the Philadelphia Convention introducing the Virginia Plan. Farrand I, 18 (29 May).
2. Cf. *The Federalist* no. 7.
3. Cf. *The Federalist* nos. 12, 16. Cf. Henry 5.15.15–16.
4. See Centinel XI, 2.7.142 n. 75; Henry 5.16.11 n. 25.
5. An essay by Philanthropos sought to show that the three non-signers differed radically in their objections. *Independent Gazetteer* 16 January 1788, McMaster and Stone 521–24.
6. "Previous to the appearance of this letter . . . it became difficult for many to conjecture how his Excellency would devise a middle course, so as to catch the spirit of all his countrymen, and to reconcile himself to all parties." Plain Dealer, Ford, *Essays* 389. Tench Coxe, however, thought that in not signing, Randolph had hurt himself politically but helped the cause of the Constitution in Virginia. Letter from Tench Coxe to James Madison, 21 October 1787, *Documentary History of the Constitution* IV, 340.
7. Cf. Randolph's explanations before the Constitutional Convention, Farrand II, 560–61 (10 September), 631 (15 September), 644–45 (17 September).
8. Cf. the objections expressed by Randolph on 10 September in Philadelphia, Farrand II, 560–61.

PART 2

Major Series of Essays at the Outset

Letters of Cato

NEW YORK JOURNAL
September 1787–January 1788

In the *New York Journal* of 27 September 1787, the same issue containing the text of the proposed Constitution,[1] there appeared the first of a series of Anti-Federal essays by Cato, addressed to the citizens of the state of New York. Historians have not generally found the arguments of this earliest series of Anti-Federal essays very significant or substantial. E. Wilder Spaulding regards them as "dull and ponderous, full of the usual tedious allusions to such classic names as Montesquieu, Hume, Locke, and Sidney, and intemperate in their dogmatism and exaggeration." He sees as their chief merit to show "far better than such scholarly productions as 'The Federalist' what men were thinking and talking."[2] Linda Grant DePauw describes them as "among the better pieces produced during the ratification campaign, although hardly good enough to be considered of enduring value or even of particular historical importance." She thinks they are "dreary" and "pedantic," and she attributes the attention they have received to the fact that they are usually thought to have been written by Governor George Clinton.[3] Yet if Cato is neither profound nor witty, his arguments have a cogency and a respectable grounding in the philosophy of the day sufficient to claim the attention of not only the student of historical movements and personalities but also the student of Anti-Federalist *thought*.

In the first essay Cato urges the importance of careful and independent deliberation in order that the people should preserve both their safety and their reputation, laying notable emphasis on the latter. Referring to the distinguished sponsorship of the Constitution, he urges the citizens of New York to "Attach yourselves to measures not to men" (I, 2.6.5). Stung by a sharp reply from Caesar, Cato devotes most of his second essay to a rebuttal, a vindication of popular authority, a showing that the proposed Constitution "originated in an assumption of power, which your voice alone can sanctify" (II, 2.6.9), and a conclusion that a full and free examination is essentially necessary.

In essay III, Cato takes up the question of consolidation, arguing the impossibility of maintaining a government both free and vigorous over so extensive and heterogeneous a country as the United States. He makes a standard Anti-Federalist defense of the small republic, conceding that some

of the states were already or would soon become too large to remain both vigorous and free.[4]

Cato then turns, in essay IV, to the Constitution, taking up first, not the legislature, but the executive which, while "not the first in order, as arranged therein, yet being the *chief*, is perhaps entitled by the rules of rank to the first consideration." (IV, 2.6.23). Some of the arguments here about the dangers of the presidency and its similarity to the British monarchy, are familiar due to the replies to them in *The Federalist*.

Pausing for brief but very interesting comments on the inexplicitness of the Constitution and the relation between the opinions and manners of the people, commerce, and the form of government (IV, 2.6.24, 28)—frequent Anti-Federalist themes—Cato turns in the remainder of his essays (V–VII) to the organization and powers of the legislature. Although not without interest, these papers are more routine than the earlier ones, criticizing the provision for biennial elections (V, 2.6.36–37); the inadequacy of the representation (V, 2.6.38); the unjust apportionment of representatives and direct taxes (VI, 2.6.39–42); the aristocratic tendency of the Senate (VI, 2.6.43) and its improper connection with the presidency (VI, 2.6.44; VII, 2.6.45); and the absence of sufficient limits on the federal governors, particularly with reference to the power given to Congress to make or alter the regulations regarding the time, place, and manner of choosing members of the federal legislature (VII, 2.6.46–48). The essays are broken off here, leaving undiscussed several heads listed in the initial sketch (V, 2.6.35).

The Cato letters (not to be confused with Cato [South Carolina] 5.10) were attributed by Paul Leicester Ford to George Clinton;[5] but on the basis of work by Jacob Cooke and Linda Grant DePauw, it now appears that Ford's attribution is almost entirely groundless.[6] Clinton's biographer, E. Wilder Spaulding, notes that "it was only in his later years that [Clinton] learned to write correct English and to spell passing well, and he was never an eager reader." Spaulding did not, nevertheless, find the essays inconsistent with Clinton's politics, style, or character, a judgment that must be given due weight, though he cites no evidence of Clinton's authorship except Ford's discussion.[7] DePauw argues that a project of this kind—sustained theoretical argument—was out of character for the relatively unscholarly Clinton and that such an early, decisive move was inconsistent with his prudent political style, particularly regarding the proposed Constitution. Yet Clinton's performance at the New York Convention, as revealed in the Bancroft transcripts, was surely theoretically respectable;[8] and he might well have taken an earlier and stronger stand against the Constitution in anonymous newspaper pieces than he would take publicly in his own name.[9] In *The Federalist* Hamilton referred to the author of Cato as "a writer who (whatever may be his real merit) has had no inconsiderable share in the applauses of his party,"[10] a description that would fit Clinton as

well as many others, including Abraham Yates, who is DePauw's candidate. An essayist in the *Connecticut Courant*, who provides what appears to be the only contemporary identification of Richard Henry Lee as the author of the Letters of The Federal Farmer, went on to express his surprise that Lee had united "with the G—r of N— Y—, and a train of Collectors of impost and excise, tide-waiters and bailiffs, to instruct us poor and despised Yankees in the arts of government. . . ."[11] The internal evidence is inconclusive. There is at least one striking similarity between a remark of Cato and one of Clinton in the New York ratifying convention, but there are several even sharper similarities between Cato and John Williams;[12] in either case, or both, the speaker may simply have found useful material in the newspaper series. DePauw suggests that on the available evidence a reasonable guess as to the author of Cato might be Abraham Yates;[13] but it must have been a far more lucid Abraham Yates than the one who is also identified by DePauw (on quite strong grounds) as having written the Sidney (and Sydney?) Anti-Federal essays.[14] The present editor is inclined to think that the weight of evidence still inclines toward Clinton as Cato; but the question is surely open. For most purposes it is better to regard him simply as—Cato.

1. The text of the Constitution had already been printed on the 22d in the New York *Independent Journal*.

2. E. Wilder Spaulding, *His Excellency George Clinton* (New York 1938) 173.

3. DePauw, *The Eleventh Pillar* 284–85. On reading Anti-Federalist essays, see below, A Countryman 6.7.4 n. 3.

4. See below, III, 2.6.16 n. 11.

5. See Ford, *Essays* 245, 281.

6. Jacob Cooke, "Alexander Hamilton's Authorship of the 'Caesar' Letters," *William and Mary Quarterly* January 1960, 78–85. The argument against Hamilton's authorship of the Caesar letters, to which Cato replies, is reenforced by the statistical work of Frederick Mosteller and David Wallace, *Inference and Disputed Authorship: The Federalist* (Reading, Mass., 1964) 251–52. DePauw devotes an appendix to her *The Eleventh Pillar* (283–92) to a full discussion of the question of the authorship of the Cato letters.

7. Spaulding, *His Excellency George Clinton*, p. 11. Spaulding betrays a certain uneasiness when he says that "the learned references to such authorities as Locke and Montesquieu showed that even the democratic governor could not rise above the affected pedantries of his time." E. Wilder Spaulding, *New York in the Critical Period 1783–1789* (New York 1932) 207. A contemporary critic was ungenerous enough to suggest that Cato had never read most of the works he refers to and that it was even probable that "he has never seen any more of Montesquieu's works, than a few scraps, picked out of some late miscellaneous pieces." Examiner in the *New York Journal* 14 December 1787.

8. See below, Clinton 6.13. Cf. DePauw, *The Eleventh Pillar* 197–98.

9. While the Philadelphia Convention was still sitting, Alexander Hamilton accused Clinton of having expressed "in public company" the opinion that the Convention was unnecessary and mischievous, giving rise to a newspaper exchange between Hamilton and Clinton's defenders. See Hamilton's letter to the New York *Daily Advertiser* 21 July 1787; the reply of A Republican on behalf of Clinton, *New York Journal* 6 September 1787; and Hamilton's rebuttal in the *Daily Advertiser* 15 September 1787. The Hamilton letters, with explanatory notes, are printed in *The*

Papers of Alexander Hamilton, ed. Harold C. Syrett et al. (New York 1961–) IV, 229–32, 248–53; see also his letter to General Washington of October 1787, 280–81. See DePauw's ingenious attempt to lay the responsibility for the powerful opposition to the Constitution in New York on Hamilton's apparently unfounded attack on Clinton, *The Eleventh Pillar* 72–83.

10. *The Federalist* no. 67. Hamilton here clearly suggests that he knows who the author was; and since, according to DePauw, "it is certain that Hamilton did not believe the governor was 'Cato,' " the case against Clinton's authorship would seem almost conclusive. DePauw, *The Eleventh Pillar* 288. DePauw's authority is Jacob E. Cooke, who relies on a letter from Hamilton to Washington, written after the appearance of Cato, saying that, "though the Governor has not *publicly declared himself* his particular connections and confidential friends are loud against it." "Alexander Hamilton's Authorship of the 'Caesar' Letters," *William and Mary Quarterly* January 1960, 79–80 n; my italics. This may mean that Hamilton did not think that Clinton wrote Cato; but the observation is altogether consistent with a belief that the Governor did write anonymously as Cato, while declining to make a public declaration in his own name. This was similar to the kind of behavior Hamilton had earlier suspected Clinton of engaging in. See also below, 2.6.16 n. 11.

11. See New England in *Connecticut Courant* 24 December 1787. On the authorship of the Letters from the Federal Farmer, see below, 2.8 intro.

12. See Cato V, 2.6.36 n. 24, and 2.6.38 n. 27.

13. DePauw, *The Eleventh Pillar* 290–92.

14. See below, Sydney 6.9 intro.

I

To the Citizens of the State of New-York.

2.6.1 The Convention, who sat at Philadelphia, have at last delivered to Congress that system of general government, which they have declared best calculated to promote your safety and happiness as citizens of the United States. This system, though not handed to you formally by the authority of government,[1] has obtained an introduction through divers channels; and the minds of you all, to whose observation it has come, have no doubt been contemplating it: and alternate joy, hope, or fear have preponderated, as it conformed to, or differed from, your various ideas of just government.

2.6.2 Government, to an American, is the science of his political safety—this then is a moment to you the most important—and that in various points—to your reputation as members of a great nation—to your immediate safety, and to that of your posterity. In your private concerns and affairs of life you deliberate with caution, and act with prudence; your public concerns require a caution and prudence, in a ratio suited to the difference [difficulty?] and dignity of the subject. The disposal of your reputation, and of your lives and property, is more momentous than a contract for a farm, or the sale of a bale of goods; in the former, if you are negligent or inattentive, the ambitious and despotic will entrap you in their toils, and bind you with the cord of

power from which you, and your posterity, may never be freed; and if the possibility should exist, it carries along with it consequences that will make your community totter to its center: in the latter, it is a mere loss of a little property, which more circumspection, or assiduity, may repair.

Without directly engaging as an advocate for this new form of national government, or as an opponent—let me conjure you to consider this a very important crisis of your safety and character—You have already, in common with the rest of your countrymen, the citizens of the other states, given to the world astonishing evidences of your greatness—you have fought under peculiar circumstances, and [were] successful against a powerful nation on a speculative question—you have established an original compact between you and your governors, a fact heretofore unknown in the formation of the governments of the world—your experience has informed you, that there are defects in the foederal system, and, to the astonishment of mankind, your legislatures have concerted measures for an alteration, with as much ease as an individual would make a disposition of his ordinary domestic affairs: this alteration now lies before you, for your consideration; but beware how you determine—do not, because you admit that something must be done, adopt any thing—teach the members of that convention, that you are capable of a supervision of their conduct. The same medium that gave you this system, if it is erroneous, while the door is now open, can make amendments, or give you another, if it is required.—Your fate, and that of your posterity, depends on your present conduct—do not give the latter reason to curse you, nor yourselves cause of reprehension; as individuals you are ambitious of leaving behind you a good name, and it is the reflection, that you have done right in this life, that blunts the sharpness of death; the same principles would be a consolation to you, as patriots, in the hour of dissolution, that you would leave to your children a fair political inheritance, untouched by the vultures of power, which you had acquired by *an unshaken* perseverance in the cause of liberty—but how miserable the alternative—you would deprecate the ruin you had brought on yourselves—be the curse of posterity, and the scorn and scoff of nations. 2.6.3

Deliberate, therefore, on this new national government with coolness; analize it with criticism; and reflect on it with candour: if you find that the influence of a powerful few, or the exercise of a standing army, will always be directed and exerted for your welfare alone, and not to the agrandizement of themselves, and that it will secure to you and your posterity happiness at home, and national dignity and respect from abroad, adopt it—if it will not, reject it with indignation—better to be where you are, for the present, than insecure forever afterwards. Turn your eyes to the United Netherlands, at this moment, and view their situation; compare it with what yours may be, under a government substantially similar to theirs. 2.6.4

Beware of those who wish to influence your passions, and to make you 2.6.5

dupes to their resentments and little interests—personal invectives can never persuade, but they always fix prejudices which candor might have removed—those who deal in them have not your happiness at heart. Attach yourselves to measures, not to men.

2.6.6 This form of government is handed to you by the recommendations of a man who merits the confidence of the public; but you ought to recollect, that the wisest and best of men may err, and their errors, if adopted, may be fatal to the community; therefore, in principles of *politics*, as well as in religious faith, every man ought to think for himself.

Hereafter, when it will be necessary, I shall make such observations, on this new constitution, as will tend to promote your welfare, and be justified by reason and truth.

Cato.

Sept. 26, 1787.

II

To the Citizens of the State of New-York.

Remember, O my friends! the laws, the rights,
The generous plan of power deliver'd down,
By your renown'd Forefathers;
So dearly bought, the price of so much blood!
O let it never perish in your hands!
But piously transmit it to your children.[2]

2.6.7 The object of my last address to you was to engage your dispassionate consideration of the new Foederal government; to caution you against precipitancy in the adoption of it; to recommend a correction of its errors, if it contained any; to hint to you the danger of an easy perversion of some of its powers; to solicit you to separate yourselves from party, and to be independent of and uninfluenced by any in your principles of politics: and, that address was closed with a promise of future observations on the same subject which should be justified by reason and truth. Here I intended to have rested the introduction, but a writer under the signature of CAESAR, in Mr. Childs's paper of the 1st instant, who treats you with passion, insult, and threat has anticipated those observations which would otherwise have remained in silence until a future period.[3] It would be criminal in me to hesitate a moment to appear as your advocate in so interesting a cause, and to resist the influence of such doctrines as this Caesar holds.—I shall take no other cognizance of his remarks on the *questionable* shape of my future, or the *equivocal* appearance of my past reflections, than to declare, that in my

past I did not mean to be misunderstood (for Caesar himself declares, that it is obviously the language of distrust) and that in my future there will not be the semblance of doubt. But, what is the language of Caesar[4]—he ridicules your prerogative, power, and majesty—he talks of this *proferred constitution* as the tender mercy of a benevolent sovereign to deluded subjects, or, as his tyrant name-sake, of his proferred grace to the virtuous Cato:—he shuts the door of free deliberation and discussion, and declares, that you must receive this government in manner and form as it is *proferred*—that you cannot revise nor amend it, and lastly, to close the scene, he insinuates, that it will be more healthy for you that the American Fabius should be induced to accept of the presidency of this new government than that, in case you do not acquiesce, he should be solicited to command an army to impose it on you. Is not your indignation roused at this absolute, imperious stile?—For what did you open the veins of your citizens and expend their treasure?—For what did you throw off the yoke of Britain and call yourselves independent?[5]—Was it from a disposition fond of change, or to procure new masters?—if those were your motives, you have your reward before you—go,—retire into silent obscurity, and kiss the rod that scourges you—bury the prospects you had in store, that you and your posterity would participate in the blessings of freedom, and the employments of your country—let the rich and insolent alone be your rulers—perhaps you are designed by providence as an emphatic evidence of the mutability of human affairs, to have the shew of happiness only, that your misery may seem the sharper, and if so, you must submit. But, if you had nobler views, and you are not designed by heaven as an example—are you now to be derided and insulted?—Is the power of thinking, on the only subject important to you, to be taken away? and if per chance you should happen to dissent from Caesar, are you to have Caesar's principles crammed down your throats with an army?—God forbid!

In democratic republics the people collectively are considered as the sovereign—all legislative, judicial, and executive power, is inherent in and derived from them. As a people, your power and authority have sanctioned and established the present government—your executive, legislative, and judicial acknowledge it by their public acts—you are again solicited to sanction and establish the future one—yet this Caesar mocks your dignity and laughs at the majesty of the people.[6] Caesar, with his usual dogmatism, enquires, if I had talents to throw light on the subject of legislation, why did I not offer them when the Convention was in session?—he is answered in a moment—I thought with him and you, that the wisdom of America, in that Convention, was drawn as it were to a Focus—I placed an unbounded confidence in some of the characters who were members of it, from the services they had rendered their country, without adverting to the ambitious and interested views of others. I was willingly led to expect a model of 2.6.8

perfection and security that would have astonished the world. Therefore, to have offered observation, on the subject of legislation, under these impressions, would have discovered no less arrogance than Caesar. The Convention too, when in session, shut their doors to the observations of the community, and their members were under an obligation of secrecy—Nothing transpired—to have suggested remarks on unknown and anticipated principles would have been like a man groping in the dark, and folly in the extreme. I confess, however, I have been disappointed, and Caesar is candid enough to make the same declaration, for he thinks it *might* have been more perfect.

2.6.9 But to call in dispute, at this time, and in the manner Caesar does, the right of free deliberation on this subject, is like a man's propounding a question to another, and telling him, at the same time, that if he does not answer agreeable to the opinion of the propounder, he will exert force to make him of the same sentiment:—to exemplify this, it will be necessary to give you a short history of the rise and progress of the Convention, and the conduct of Congress thereon. The states in Congress suggested, that the articles of confederation had provided for making alterations in the confederation—that there were defects therein, and as a mean to remedy which, a Convention of delegates, appointed by the different states, was resolved expedient to be held for the sole and express purpose of revising it, and reporting to Congress and the different legislatures such alterations and provisions therein as should (when agreed to in Congress and confirmed by the several states) render the foederal constitution adequate to the exigencies of government. This resolution is sent to the different states, and the legislature of this state, with others, appoint, in conformity thereto, delegates for the purpose, and in the words mentioned in that resolve, as by the resolution of Congress, and the concurrent resolutions of the senate and assembly of this state, subjoined, will appear.[7] For the sole and express purpose aforesaid a Convention of delegates is formed at Philadelphia:—what have they done? have they revised the confederation, and has Congress agreed to their report?—neither is the fact.—This Convention have exceeded the authority given to them, and have transmitted to Congress a new political fabric, essentially and fundamentally distinct and different from it, in which the different states do not retain separately their sovereignty and independency, united by a confederated league—but one entire sovereignty—a consolidation of them into one government—in which new provisions and powers are not made and vested in Congress, but in an assembly, senate, and president, who are not know in the articles of confederation.—Congress, without agreeing to, or approving of, this system *proferred* by the Convention, have sent it to the different legislatures, not for their confirmation, but to submit it to the people; not in conformity to their own resolution, but in conformity to the resolution of the Convention

made and provided in that case. Was it then, from the face of the foregoing facts, the intention of Congress, and of this and the other states, that the essence of our present national government should be annihilated, or that it should be retained and only [have] an increase of substantial necessary powers? Congress, sensible of this latter principle, and that the Convention had taken on themselves a power which neither they nor the other states had a right to delegate to them, and that they could not agree to, and approve of this consolidated system, nor the states confirm it—have been silent on its character; and though many have dwelt on their unanimity, it is no less than the unanimity of opinion that it originated in an assumption of power, which your voice alone can sanctify. This new government, therefore, founded in usurpation, is referred to your opinion as the origin of power not heretofore delegated, and, to this end, the exercise of the prerogative of free examination is essentially necessary; and yet you are unhesitatingly to acquiesce, and if you do not, the American Fabius, if we may believe Caesar, is to command an army to impose it. It is not my view to rouse your passions, I only wish to excite you to, and assist you in, a cool and deliberate discussion of the subject, to urge you to behave like sensible freemen. Think, speak, act, and assert your opinions and rights—let the same good sense govern you with respect to the adoption of a future system for the administration of your public affairs that influenced you in the formation of the present.—Hereafter I do not intend to be diverted by either Caesar, or any other—My object is to take up this new form of national government—compare it with the experience and the opinions of the most sensible and approved political authors—and to shew, that its principles, and the exercise of them, will be dangerous to your liberty and happiness.

Cato.

III

To the Citizens of the State of New-York.

In the close of my last introductory address, I told you, that my object in future would be to take up this new form of national government, to compare it with the experience and opinions of the most sensible and approved political authors, and to show you that its principles, and the exercise of them [,] will be dangerous to your liberty and happiness. 2.6.10

Although I am conscious that this is an arduous undertaking, yet I will perform it to the best of my ability.

The freedom, equality, and independence which you enjoyed by nature, 2.6.11

induced you to consent to a political power. The same principles led you to examine the errors and vices of a British superintendence, to divest yourselves of it, and to reassume a new political shape. It is acknowledged that there are defects in this, and another is tendered to you for acceptance; the great question then, that arises on this new political principle, is, whether it will answer the ends for which it is said to be offered to you, and for which all men engage in political society, to wit, the mutual preservation of their lives, liberties, and estates.

2.6.12 The recital, or premises on which this new form of government is erected, declares a consolidation or union of all the thirteen parts, or states, into one great whole, under the firm [form?] of the United States, for all the various and important purposes therein set forth.—But whoever seriously considers the immense extent of territory comprehended within the limits of the United States, together with the variety of its climates, productions, and commerce, the difference of extent, and number of inhabitants in all; the dissimilitude of interest, morals, and policies, in almost every one, will receive it as an intuitive truth, that a consolidated republican form of government therein, can never *form a perfect union, establish justice, insure domestic tranquility, promote the general welfare, and secure the blessings of liberty to you and your posterity*, for to these objects it must be directed: this unkindred legislature therefore, composed of interests opposite and dissimilar in their nature, will in its exercise, emphatically be, like a house divided against itself.

2.6.13 The governments of Europe have taken their limits and form from adventitious circumstances, and nothing can be argued on the motive of agreement from them; but these adventitious political principles, have nevertheless produced effects that have attracted the attention of philosophy, which has established axioms in the science of politics therefrom, as irrefragable as any in Euclid. It is natural, says Montesquieu, *to a republic to have only a small territory, otherwise it cannot long subsist: in a large one, there are men of large fortunes, and consequently of less moderation; there are too great deposits to intrust in the hands of a single subject, an ambitious person soon becomes sensible that he may be happy, great, and glorious by oppressing his fellow citizens, and that he might raise himself to grandeur, on the ruins of his country. In large republics, the public good is sacrificed to a thousand views; in a small one the interest of the public is easily perceived, better understood, and more within the reach of every citizen; abuses have a less extent, and of course are less protected*—he also shews you, that the duration of the republic of Sparta, was owing to its having continued with the same extent of territory after all its wars; and that the ambition of Athens and Lacedemon to command and direct the union, lost them their liberties, and gave them a monarchy.[8]

2.6.14 From this picture, what can you promise yourselves, on the score of

consolidation of the United States, into one government—impracticability in the just exercise of it—your freedom insecure—even this form of government limited in its continuance—the employments of your country disposed of to the opulent, to whose contumely you will continually be an object—you must risque much, by indispensably placing trusts of the greatest magnitude, into the hands of individuals, whose ambition for power, and aggrandizement, will oppress and grind you—where, from the vast extent of your territory, and the complication of interests, the science of government will become intricate and perplexed, and too misterious for you to understand, and observe; and by which you are to be conducted into a monarchy, either limited or despotic; the latter, Mr. Locke remarks, *is a government derived from neither nature, nor compact.*[9]

Political liberty, the great Montesquieu again observes, *consists in security, or at least in the opinion we have of security;*[10] and this *security* therefore, or the *opinion*, is best obtained in moderate governments, where the mildness of the laws, and the equality of the manners, beget a confidence in the people, which produces this security, or the opinion. This moderation in governments, depends in a great measure on their limits, connected with their political distribution. 2.6.15

The extent of many of the states in the Union, is at this time, almost too great for the superintendence of a republican form of government, and must one day or other, revolve into more vigorous ones, or by separation be reduced into smaller, and more useful, as well as moderate ones.[11] You have already observed the feeble efforts of Massachusetts against their insurgents; with what difficulty did they quell that insurrection; and is not the province of Main at this moment, on the eve of separation from her. The reason of these things is, that for the security of the *property* of the community, in which expressive term Mr. Lock makes life, liberty, and estate, to consist[12]—the wheels of a free republic are necessarily slow in their operation; hence in large free republics, the evil sometimes is not only begun, but almost completed, before they are in a situation to turn the current into a contrary progression: the extremes are also too remote from the usual seat of government, and the laws therefore too feeble to afford protection to all its parts, and insure *domestic tranquility* without the aid of another principle. If, therefore, this state, and that of N. Carolina, had an army under their controul, they never would have lost Vermont, and Frankland, nor the state of Massachusetts suffer an insurrection, or the dismemberment of her fairest district, but the exercise of a principle which would have prevented these things, if we may believe the experience of ages, would have ended in the destruction of their liberties. 2.6.16

Will this consolidated republic, if established, in its exercise beget such confidence and compliance, among the citizens of these states, as to do without the aid of a standing army—I deny that it will.—The mal-contents in 2.6.17

each state, who will not be a few, nor the least important, will be exciting factions against it—the fear of a dismemberment of some of its parts, and the necessity to enforce the execution of revenue laws (a fruitful source of oppression) on the extremes and in the other districts of the government, will incidentally, and necessarily require a permanent force, to be kept on foot—will not political security, and even the opinion of it, be extinguished? can mildness and moderation exist in a government, where the primary incident in its exercise must be force? will not violence destroy confidence, and can equality subsist, where the extent, policy, and practice of it, will naturally lead to make odious distinctions among citizens?

2.6.18 The people, who may compose this national legislature from the southern states, in which, from the mildness of the climate, the fertility of the soil, and the value of its productions, wealth is rapidly acquired, and where the same causes naturally lead to luxury, dissipation, and a passion for aristocratic distinctions; where slavery is encouraged, and liberty of course, less respected, and protected; who know not what it is to acquire property by their own toil, nor to oeconomise with the savings of industry—will these men therefore be as tenacious of the liberties and interests of the more northern states, where freedom, independence, industry, equality, and frugality, are natural to the climate and soil, as men who are your own citizens, legislating in your own state, under your inspection, and whose manners, and fortunes, bear a more equal resemblance to your own?[13]

2.6.19 It may be suggested, in answer to this, that whoever is a citizen of one state, is a citizen of each, and that therefore he will be as interested in the happiness and interest of all, as the one he is delegated from; but the argument is fallacious, and, whoever has attended to the history of mankind, and the principles which bind them together as parents, citizens, or men, will readily perceive it. These principles are, in their exercise, like a pebble cast on the calm surface of a river, the circles begin in the center, and are small, active, and forcible, but as they depart from that point, they lose their force, and vanish into calmness.

2.6.20 The strongest principle of union resides within our domestic walls. The ties of the parent exceed that of any other; as we depart from home, the next general principle of union is amongst citizens of the same state, where acquaintance, habits, and fortunes, nourish affection, and attachment; enlarge the circle still further, and, as citizens of different states, though we acknowledge the same national denomination, we lose the ties of acquaintance, habits, and fortunes, and thus, by degrees, we lessen in our attachments, till, at length, we no more than acknowledge a sameness of species. Is it therefore, from certainty like this, reasonable to believe, that inhabitants of Georgia, or New-Hampshire, will have the same obligations towards you as your own, and preside over your lives, liberties, and property, with the same care and attachment? Intuitive reason, answers in the negative.[14]

In the course of my examination of the principals of consolidation of the states into one general government, many other reasons against it have occurred, but I flatter myself, from those herein offered to your consideration, I have convinced you that it is both presumptuous and impracticable consistent with your safety. To detain you with further remarks, would be useless—I shall however, continue in my following numbers, to anilise this new government, pursuant to my promise. 2.6.21

Cato.

IV

To the Citizens of the State of New-York.

Admitting, however, that the vast extent of America, together with the various other reasons which I offered you in my last number, against the practicability of the just exercise of the new government are insufficient to convince you; still it is an undeniable truth, that its several parts are either possessed of principles, which you have heretofore considered as ruinous, and that others are omitted which you have established as fundamental to your political security, and must in their operation, I will venture to assert—fetter your tongues and minds, enchain your bodies, and ultimately extinguish all that is great and noble in man. 2.6.22

In pursuance of my plan, I shall begin with observations on the executive branch of this new system; and though it is not the first in order, as arranged therein, yet being the *chief*, is perhaps entitled by the rules of rank to the first consideration. The executive power as described in the 2d article, consists of a president and vice-president, who are to hold their offices *during* the term of four years; the same article has marked the manner and time of their election, and established the qualifications of the president; it also provides against the removal, death, or inability of the president and vice-president—regulates the salary of the president, delineates his duties and powers; and lastly, declares the causes for which the president and vice-president shall be removed from office. 2.6.23

Notwithstanding the great learning and abilities of the gentlemen who composed the convention, it may be here remarked with deference, that the construction of the first paragraph of the first section of the second article, is vague and inexplicit, and leaves the mind in doubt, as to the election of a president and vice-president, after the expiration of the election for the first term of four years—in every other case, the election of these great officers is expressly provided for; but there is no explicit provision for their election in case of the expiration of their offices, subsequent to the election which is to 2.6.24

set this political machine in motion—no certain and express terms as in your state constitution, that *statedly* once in every four years, and as often as these offices shall become vacant, by expiration or otherwise, as is therein expressed, an election shall be held as follows, etc.—this inexplicitness perhaps may lead to an establishment for life.

2.6.25 It is remarked by Montesquieu, in treating of republics, that *in all magistracies, the greatness of the power must be compensated by the brevity of the duration; and that a longer time than a year, would be dangerous.*[15] It is therefore obvious to the least intelligent mind, to account why, great power in the hands of a magistrate, and that power connected, with a considerable duration, may be dangerous to the liberties of a republic—the deposit of vast trusts in the hands of a single magistrate, enables him in their exercise, to create a numerous train of dependants—this tempts his *ambition*, which in a republican magistrate is also remarked, *to be pernicious* and the duration of his office for any considerable time favours his views, gives him the means and time to perfect and execute his designs—*he therefore fancies that he may be great and glorious by oppressing his fellow citizens, and raising himself to permanent grandeur on the ruins of his country.*[16]—And here it may be necessary to compare the vast and important powers of the president, together with his continuance in office with the foregoing doctrine—his eminent magisterial situation will attach many adherents to him, and he will be surrounded by expectants and courtiers—his power of nomination and influence on all appointments—the strong posts in each state comprised within his superintendance, and garrisoned by troops under his direction—his controul over the army, militia, and navy—the unrestrained power of granting pardons for treason, which may be used to screen from punishment, those whom he had secretly instigated to commit the crime, and thereby prevent a discovery of his own guilt—his duration in office for four years: these, and various other principles evidently prove the truth of the position—that if the president is possessed of ambition, he has power and time sufficient to ruin his country.[17]

2.6.26 Though the president, during the sitting of the legislature, is assisted by the senate, yet he is without a constitutional council in their recess—he will therefore be unsupported by proper information and advice, and will generally be directed by minions and favorites, or a council of state will grow out of the principal officers of the great departments, the most dangerous council in a free country.

2.6.27 The ten miles square, which is to become the seat of government, will of course be the place of residence for the president and the great officers of state—the same observations of a great man will apply to the court of a president possessing the powers of a monarch, that is observed of that of a monarch—*ambition with idleness—baseness with pride—the thirst of riches without labour—aversion to truth—flattery—treason—perfidy—violation of*

engagements—contempt of civil duties—hope from the magistrate's weakness; but above all, the perpetual ridicule of virtue—these, he remarks, are the characteristics by which the courts in all ages have been distinguished.[18]

2.6.28 The language and the manners of this court will be what distinguishes them from the rest of the community, not what assimilates them to it, and in being remarked for a behaviour that shews they are not *meanly born*, and in adulation to people of fortune and power.

2.6.29 The establishment of a vice-president is as unnecessary as it is dangerous. This officer, for want of other employment, is made president of the senate, thereby blending the executive and legislative powers, besides always giving to some one state, from which he is to come, an unjust pre-eminence.

2.6.30 It is a maxim in republics, that the representative of the people should be of their immediate choice; but by the manner in which the president is chosen he arrives to this office at the fourth or fifth hand, nor does the highest vote, in the way he is elected, determine the choice—for it is only necessary that he should be taken from the highest of five, who may have a plurality of votes.

2.6.31 Compare your past opinions and sentiments with the present proposed establishment, and you will find, that if you adopt it, that it will lead you into a system which you heretofore reprobated as odious. Every American whig, not long since, bore his emphatic testimony against a monarchical government, though limited, because of the dangerous inequality that it created among citizens as relative to their rights and property;[19] and wherein does this president, invested with his powers and prerogatives, essentially differ from the king of Great-Britain (save as to name, the creation of nobility and some immaterial incidents, the offspring of absurdity and locality)[. T]he direct prerogatives of the president, as springing from his political character, are among the following:—It is necessary, in order to distinguish him from the rest of the community, and enable him to keep, and maintain his court, that the compensation for his services; or in other words, his revenue should be such as to enable him to appear with the splendor of a prince; he has the power of receiving embassadors from, and a great influence on their appointments to foreign courts; as also to make treaties, leagues, and alliances with foreign states, assisted by the senate, which when made, become the supreme law of the land: he is a constituent part of the legislative power; for every bill which shall pass the house of representatives and senate, is to be presented to him for approbation; if he approves of it, he is to sign it, if he disapproves, he is to return it with objections, which in many cases will amount to a compleat negative; and in this view he will have a great share in the power of making peace, coining money, etc. and all the various objects of legislation, expressed or implied in this Constitution: for though it may be asserted that the king of Great-Britain has the express power of making peace or war, yet he never thinks it prudent so to do

without the advice of his parliament from whom he is to derive his support, and therefore these powers, in both president and king, are substantially the same: he is the generalissimo of the nation, and of course, has the command and controul of the army, navy and militia; he is the general conservator of the peace of the union—he may pardon all offences, except in cases of impeachment, and the principal fountain of all offices and employments. Will not the exercise of these powers therefore tend either to the establishment of a vile and arbitrary aristocracy, or monarchy? The safety of the people in a republic depends on the share or proportion they have in the government; but experience ought to teach you, that when a man is at the head of an elective government invested with great powers, and interested in his re-election, in what circle appointments will be made; by which means *an imperfect aristocracy* bordering on monarchy may be established.

2.6.32 You must, however, my countrymen, beware, that the advocates of this new system do not deceive you, by a fallacious resemblance between it and your own state government, which you so much prize;[20] and if you examine, you will perceive that the chief magistrate of this state, is your immediate choice, controuled and checked by a just and full representation of the people, divested of the prerogative of influencing war and peace, making treaties, receiving and sending embassies, and commanding standing armies and navies, which belong to the power of the confederation, and will be convinced that this government is no more like a true picture of your own, than an Angel of darkness resembles an Angel of light.

Cato.

V

To the Citizens of the State of New-York.

2.6.33 In my last number I endeavored to prove that the language of the article relative to the establishment of the executive of this new government was vague and inexplicit, that the great powers of the President, connected with his duration in office would lead to oppression and ruin. That he would be governed by favorites and flatterers, or that a dangerous council would be collected from the great officers of state;—that the ten miles square, if the remarks of one of the wisest men, drawn from the experience of mankind, may be credited, would be the asylum of the base, idle, avaricious and ambitious, and that the court would possess a language and manners different from yours; that a vice-president is as unnecessary, as he is dangerous in

his influence—that the president cannot represent you because he is not of your own immediate choice, that if you adopt this government, you will incline to an arbitrary and odious aristocracy or monarchy—that the president possessed of the power, given him by this frame of government differs but very immaterially from the establishment of monarchy in Great Britain, and I warned you to beware of the fallacious resemblance that is held out to you by the advocates of this new system between it and your own state governments.

2.6.34 And here I cannot help remarking, that inexplicitness seems to pervade this whole political fabric: certainty in political compacts, which Mr. Coke calls *the mother and nurse of repose and quietness,*[21] the want of which induced men to engage in political society, has ever been held by a wise and free people as essential to their security; as, on the one hand it fixes barriers which the ambitious and tyrannically disposed magistrate dare not overleap, and on the other, becomes a wall of safety to the community—otherwise stipulations between the governors and governed are nugatory; and you might as well deposit the important powers of legislation and execution in one or a few and permit them to govern according to their disposition and will: but the world is too full of examples, which prove that *to live by one man's will became the cause of all men's misery.*[22] Before the existence of express political compacts it was reasonably implied that the magistrate should govern with wisdom and justice, but mere implication was too feeble to restrain the unbridled ambition of a bad man, or afford security against negligence, cruelty, or any other defect of mind. It is alledged that the opinions and manners of the people of America, are capable to resist and prevent an extension of prerogative or oppression; but you must recollect that opinion and manners are mutable, and may not always be a permanent obstruction against the encroachments of government; that the progress of a commercial society begets luxury, the parent of inequality, the foe to virtue, and the enemy to restraint; and that ambition and voluptuousness aided by flattery, will teach magistrates, where limits are not explicitly fixed to have separate and distinct interests from the people, besides it will not be denied that government assimilates the manners and opinions of the community to it.[23] Therefore, a general presumption that rulers will govern well is not a sufficient security.—You are then under a sacred obligation to provide for the safety of your posterity, and would you now basely desert their interests, when by a small share of prudence you may transmit to them a beautiful political patrimony, which will prevent the necessity of their travelling through seas of blood to obtain that, which your wisdom might have secured:—It is a duty you owe likewise to your own reputation, for you have a great name to lose; you are characterised as cautious, prudent and jealous in politics; whence is it therefore, that you are about to precipitate yourselves into a sea of uncertainty, and adopt a system so vague, and

which has discarded so many of your valuable rights:—Is it because you do not believe that an American can be a tyrant? If this be the case you rest on a weak basis[;] Americans are like other men in similar situations, when the manners and opinions of the community are changed by the causes I mentioned before, and your political compact inexplicit, your posterity will find that great power connected with ambition, luxury, and flattery, will as readily produce a Caesar, Caligula, Nero, and Domitian in America, as the same causes did in the Roman empire.

2.6.35 But the next thing to be considered in conformity to my plan, is the first article of this new government, which comprises the erection of the house of representatives and senate, and prescribes their various powers and objects of legislation. The most general objections to the first article, are that biennial elections for representatives are a departure from the safe democratical principles of annual ones—that the number of representatives are too few; that the apportionment and principles of increase are unjust; that no attention has been paid to either the numbers or property in each state in forming the senate; that the mode in which they are appointed and their duration, will lead to the establishment of an aristocracy; that the senate and president are improperly connected, both as to appointments, and the making of treaties, which are to become the supreme law of the land; that the judicial in some measure, to wit, as to the trial of impeachments[,] is placed in the senate[,] a branch of the legislative, and some times a branch of the executive: that Congress have the improper power of making or altering the regulations prescribed by the different legislatures, respecting the time, place, and manner of holding elections for representatives, and the time and manner of choosing senators; that standing armies may be established, and appropriation of money made for their support for two years; that the militia of the most remote state may be marched into those states situated at the opposite extreme of this continent; that the slave trade is, to all intents and purposes permanently established; and a slavish capitation, or poll-tax, may at any time be levied—these are some of the many evils that will attend the adoption of this government.

2.6.36 But with respect to the first objection, it may be remarked that a well digested democracy has this advantage over all others, to wit, that it affords to many the opportunity to be advanced to the supreme command, and the honors they thereby enjoy fill them with a desire of rendering themselves worthy of them; hence this desire becomes part of their education, is matured in manhood, and produces an ardent affection for their country, and it is the opinion of the great Sidney, and Montesquieu that this is in a great measure produced by annual election of magistrates.[24]

2.6.37 If annual elections were to exist in this government, and learning and information to become more prevalent, you never will want men to execute whatever you could design—Sidney observes *that a well governed state is as fruitful to all good purposes as the seven headed serpent is said to have*

been in evil; when one head is cut off, many rise up in the place of it. He remarks further, that *it was also thought, that free cities by frequent elections of magistrates became nurseries of great and able men, every man endeavoring to excel others, that he might be advanced to the honor he had no other title to, than what might arise from his merit, or reputation,*[25] but the framers of this *perfect government*, as it is called, have departed from this democratical principle, and established bi-ennial elections for the house of representatives, who are to be chosen by the people, and sextennial for the senate, who are to be chosen by the legislatures of the different states, and have given to the executive the unprecedented power of making temporary senators, in case of vacancies, by resignation or otherwise,[26] and so far forth establishing a precedent for virtual representation (though in fact, their original appointment is virtual) thereby influencing the choice of the legislatures, or if they should not be so complaisant as to conform to his appointment—offence will be given to the executive and the temporary members will appear ridiculous by rejection; this temporary member, during his time of appointment, will of course act by a power derived from the executive, and for, and under his immediate influence.

It is a very important objection to this government, that the representation consists of so few; too few to resist the influence of corruption, and the temptation to treachery, against which all governments ought to take precautions—how guarded you have been on this head, in your own state constitution, and yet the number of senators and representatives proposed for this vast continent, does not equal those of your own state; how great the disparity, if you compare them with the aggregate numbers in the United States. The history of representation in England, from which we have taken our model of legislation, is briefly this[:] before the institution of legislating by deputies, the whole free part of the community usually met for that purpose; when this became impossible, by the increase of numbers the community was divided into districts, from each of which was sent such a number of deputies as was a complete representation of the various numbers and orders of citizens within them; but can it be asserted with truth, that six men can be a complete and full representation of the numbers and various orders of the people in this state?[27] Another thing [that] may be suggested against the small number of representatives is, that but few of you will have the chance of sharing even in this branch of the legislature; and that the choice will be confined to a very few; the more complete it is, the better will your interests be preserved, and the greater the opportunity you will have to participate in government, one of the principal securities of a free people; but this subject has been so ably and fully treated by a writer under the signature of Brutus,[28] that I shall content myself with referring you to him thereon, reserving further observations on the other objections I have mentioned, for my future numbers. 2.6.38

Cato.

VI

To the People of the State of New-York.

2.6.39 The next objection that arises against this proferred constitution is, that the apportionment of representatives and direct taxes are unjust.—The words as expressed in this article are, "representatives and direct taxes shall be apportioned among the several states, which may be included in this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed[,] three fifths of all other persons." In order to elucidate this, it will be necessary to repeat the remark in my last number, that the mode of legislation in the infancy of free communities was by the collective body, and this consisted of free persons, or those whose age admitted them to the rights of mankind and citizenship—whose sex made them capable of protecting the state, and whose birth may be denominated Free Born, and no traces can be found that ever women, children, and slaves, or those who were not sui juris, in the early days of legislation, meeting with the free members of the community to deliberate on public measures; hence is derived this maxim in free governments, that representation ought to bear a proportion to the number of free inhabitants in a community; this principle your own state constitution, and others, have observed in the establishment of a future census, in order to apportion the representatives, and to increase or diminish the representation to the ratio of the increase or diminution of electors. But, what aid can the community derive from the assistance of women, infants, and slaves, in their deliberation, or in their defence? and what motive therefore could the convention have in departing from the just and rational principle of representation, which is the governing principle of this state and of all America.

2.6.40 The doctrine of taxation is a very important one, and nothing requires more wisdom and prudence than the regulation of that portion, which is taken from, and of that which is left to, the subject—and if you anticipate, what will be the enormous expence of this new government added also to your own, little will that portion be which will be left to you. I know there are politicians who believe, that you should be loaded with taxes, in order to make you industrious, and, perhaps, there are some of this opinion in the convention, but it is an erroneous principle—For, what can inspire you with industry, if the greatest measures of your labours are to be swallowed up in taxes? The advocates for this new system hold out an idea, that you will have but little to pay, for, that the revenues will be so managed as to be almost wholly drawn from the source of trade or duties on imports, but this is delusive—for this government to discharge all its incidental expences, besides paying the interests on the home and foreign debts, will require

more money than its commerce can afford; and if you reflect one moment, you will find, that if heavy duties are laid on merchandize, as must be the case, if government intend to make this the prime medium to lighten the people of taxes, that the price of the commodities, useful as well as luxurious, must be increased; the consumers will be fewer; the merchants must import less; trade will languish, and this source of revenue in a great measure be dried up; but if you examine this a little further, you will find, that this revenue, managed in this way, will come out of you and be a very heavy and ruinous one, at least—The merchant no more than advances the money for you to the public, and will not, nor cannot pay any part of it himself, and if he pays more duties, he will sell his commodities at a price portionably raised—thus the laborer, mechanic, and farmer, must feel it in the purchase of their utensils and clothing—wages, etc. must rise with the price of things, or they must be ruined. [A]nd that must be the case with the farmer, whose produce will not increase, in the ratio, with labour, utensils, and clothing; for that he must sell at the usual price or lower, perhaps caused by the decrease of trade; the consequence will be, that he must mortgage his farm, and then comes inevitable bankruptcy.

In what manner then will you be eased, if the expences of government are 2.6.41
to be raised solely out of the commerce of this country; do you not readily apprehend the fallacy of this argument. But government will find, that to press so heavily on commerce will not do, and therefore must have recourse to other objects; these will be a capitation or poll-tax, window lights, etc. etc. and a long train of impositions which their ingenuity will suggest; but will you submit to be numbered like the slaves of an arbitrary despot; and what will be your reflections when the taxmaster thunders at your door for the duty on that light which is the bounty of heaven. It will be the policy of the great landholders who will chiefly compose this senate, and perhaps a majority of this house of representatives, to keep their lands free from taxes; and this is confirmed by the failure of every attempt to lay a land-tax in this state; hence recourse must and will be had to the sources I mentioned before. The burdens on you will be insupportable—your complaints will be inefficacious—this will beget public disturbances, and I will venture to predict, without the spirit of prophecy, that you and the government, if it is adopted, will one day be at issue on this point. The force of government will be exerted, this will call for an increase of revenue, and will add fuel to the fire. The result will be, that either you will revolve to some other form, or that government will give peace to the country, by destroying the opposition. If government therefore can, notwithstanding every opposition, raise a revenue on such things as are odious and burdensome to you, they can do any thing.

But why should the number of individuals be the principle to apportion 2.6.42
the taxes in each state, and to include in that number, women, children and slaves. The most natural and equitable principle of apportioning taxes,

would be in a ratio to their property, and a reasonable impost in a ratio to their trade; but you are told to look for the reason of these things in accommodation; but this much admired principle, when strip[p]ed of its mistery, will in this case appear to be no less than a basis for an odious poll-tax—the offspring of despotic governments, a thing so detestable, that the state of Maryland, in their bill of rights, declares, "that the levying taxes by the poll, is grievous and oppressive, and ought to be abolished."—A poll-tax is at all times oppressive to the poor, and their greatest misfortune will consist in having more prolific wives than the rich.[29]

2.6.43 In every civilized community, even in those of the most democratic kind, there are principles which lead to an aristocracy—these are superior talents, fortunes, and public employments.[30] But in free governments, the influence of the two former is resisted by the equality of the laws, and the latter by the frequency of elections, and the chance that every one has in sharing in public business; but when this natural and artificial eminence is assisted by principles interwoven in this government—when the senate, so important a branch of the legislature, is so far removed from the people, as to have little or no connexion with them; when their duration in office is such as to have the resemblance of perpetuity, when they are connected with the executive, by the appointment of all officers, and also, to become a judiciary for the trial of officers of their own appointments: added to all this, when none but men of oppulence will hold a seat, what is there left to resist and repel this host of influence and power. Will the feeble efforts of the house of representatives, in whom your security ought to subsist, consisting of about seventy-three, be able to hold the balance against them, when, from the fewness of the number in this house, the senate will have in their power to poison even a majority of that body by douceurs of office for themselves or friends. From causes like this both Montesquieu and Hume have predicted the decline of the British government into that of an absolute one;[31] but the liberties of this country, it is probable if this system is adopted, will be strangled in their birth; for whenever the executive and senate can destroy the independence of the majority in the house of representatives then where is your security?—They are so intimately connected, that their interests will be one and the same; and will the slow increase of numbers be able to afford a repelling principle? but you are told to adopt this government first, and you will always be able to alter it afterwards; this would be first submitting to be slaves and then taking care of your liberty; and when your chains are on, then to act like freemen.

2.6.44 Complete acts of legislation, which are to become the supreme law of the land, ought to be the united act of all the branches of government; but there is one of the most important duties [that] may be managed by the senate and executive alone, and to have all the force of the law paramount without the aid or interference of the house of representatives; that is the power of making treaties. This power is a very important one, and may be exercised

in various ways, so as to affect your person and property, and even the domain of the nation. By treaties you may defalcate part of the empire; engagements may be made to raise an army, and you may be transported to Europe, to fight the wars of ambitious princes; money may be contracted for, and you must pay it; and a thousand other obligations may be entered into; all which will become the supreme law of the land, and you are bound by it. If treaties are erroneously or wickedly made who is there to punish—the executive can always cover himself with the plea, that he was advised by the senate; and the senate being a collective body are not easily made accountable for mal-administration. On this account we are in a worse situation than Great-Britain, where they have secured by a ridiculous fiction, the King from accountability, by declaring that he can do no wrong, by which means the nation can have redress against his minister; but with us infalibility pervades every part of the system, and neither the executive nor his council, who are a collective body, and his advisers, can be brought to punishment for mal-administration.

Cato.

VII

To the Citizens of the State of New-York.

That the senate and president are further improperly connected, will appear, if it is considered, that their dependence on each other will prevent either from being a check upon the other; they must act in concert, and whether the power and influence of the one or the other is to prevail, will depend on the character and abilities of the men who hold those offices at the time. The senate is vested with such a proportion of the executive, that it would be found necessary that they should be constantly sitting. This circumstance did not escape the convention, and they have provided for the event, in the 2d article, which declares, that the executive may, on extraordinary occasions, *convene both houses or either of them.* No occasion can exist for calling the assembly without the senate; the words *or either of them,* must have been intended to apply only to the senate. Their wages are already provided for; and it will be therefore readily observed, that the partition between a perpetuation of their sessions and a perpetuation of their offices, in the progress of the government, will be found to be but thin and feeble. Besides, the senate, who have the sole power to try all impeachments, in case of the impeachment of the president, are to determine, as judges, the propriety of the advice they gave him, as senators. Can the senate in this, therefore, be an impartial judicature? And will they not rather serve as a screen to great public defaulters? 2.6.45

2.6.46 Among the many evils that are incorporated in this new system of government, is that of congress having the power of making or altering the regulations prescribed by the different legislatures, respecting the time, place, and manner of holding elections for representatives, and the time, and manner of choosing senators. If it is enquired, in what manner this regulation may be exercised to your injury—the answer is easy.

2.6.47 By the first article the house of representatives shall consist of members, chosen every second year by the people of the several states, who are qualified to vote for members of their several state assemblies; it can therefore readily be believed, that the different state legislatures, provided such can exist after the adoption of this government, will continue those easy and convenient modes for the election of representatives for the national legislature, that are in use, for the election of members of assembly for their own states; but the congress have, by the constitution, a power to make other regulations, or alter those in practice, prescribed by your own state legislatures; hence, instead of having the places of elections in the precincts, and brought home almost to your own doors, Congress may establish a place, or places, at either the extremes, center, or outer parts of the states; at a time and season too, when it may be very inconvenient to attend; and by these means destroy the rights of election; but in opposition to this reasoning, it is asserted, that it is a necessary power because the states might omit making rules for the purpose, and thereby defeat the existence of that branch of the government; this is what logicians call *argumentum absurdum*, for the different states, if they will have any security at all in this government, will find it in the house of representatives, and they, therefore, would not be very ready to eradicate a principle in which it dwells, or involve their country in an instantaneous revolution. Besides, if this was the apprehension of the framers, and the ground of that provision, why did not they extend this controuling power to the other duties of the several state legislatures. To exemplify this the states are to appoint senators, and electors for choosing of a president; but the time is to be under the direction of congress. Now, suppose they were to omit the appointment of senators and electors, though congress was to appoint the time, which might [as] well be apprehended as the omission of regulations for the election of members of the house of representatives, provided they had that power; or suppose they were not to meet at all: of course, the government cannot proceed in its exercise. And from this motive, or apprehension, congress ought to have taken these duties entirely in their own hands, and, by a decisive declaration, annihilated them, which they in fact have done by leaving them without the means of support, or at least resting on their bounty. To this, the advocates for this system oppose the common, empty declamation, that there is no danger that congress will abuse this power; but such language, as relative to so important a subject, is mere vapour, and sound without sense. Is it not in their power, however, to make such regulations as may be inconvenient to you?

It must be admitted, because the words are unlimited in their sense. It is a good rule, in the construction of a contract, to suppose, that what may be done will be; therefore, in considering this subject, you are to suppose, that in the exercise of this government, a regulation of congress will be made, for holding an election for the whole state at Poughkeepsie, at New-York, or, perhaps, at Fort-Stanwix: who will then be the actual electors for the house of representatives? Very few more than those who may live in the vicinity of these places. Could any others afford the expence and time of attending? And would not the government by this means have it in their power to put whom they pleased in the house of representatives? You ought certainly to have as much or more distrust with respect to the exercise of these powers by congress, than congress ought to have with respect to the exercise of those duties which ought to be entrusted to the several states, because over them congress can have a legislative controuling power.

Hitherto we have tied up our rulers in the exercise of their duties by positive restrictions—if the cord has been drawn too tight, loosen it to the necessary extent, but do not entirely unbind them.—I am no enemy to placing a reasonable confidence in them; but such an unbounded one as the advocates and framers of this new system advise you to, would be dangerous to your liberties; it has been the ruin of other governments, and will be yours, if you adopt with all its latitudinal powers—unlimited confidence in governors as well as individuals is frequently the parent of deception [despotism?].—What facilitated the corrupt designs of Philip of Macedon, and caused the ruin of Athens, but the unbounded confidence in their statesmen and rulers? Such improper confidence Demosthenes was so well convinced had ruined his country, that in his second Philippic oration he remarks—"that there is one common bulwark with which men of prudence are naturally provided, the guard and security of all people, particularly of free states, against the assaults of tyrants—What is this? Distrust. Of this be mindful; to this adhere; perserve this carefully, and no calamity can affect you.["][32]—Montesquieu observes, that "the course of government is attended with an insensible descent to evil, and there is no reascending to good without very great efforts."[33] The plain inference from this doctrine is, that rulers in all governments will erect an interest separate from the ruled, which will have a tendency to enslave them. There is therefore no other way of interrupting this insensible descent and warding off the evil as long as possible, than by establishing principles of distrust in your constituents, and cultivating the sentiment among yourselves. But let me enquire of you, my countrymen, whether the freedom and independence of elections is a point of magnitude? If it is, what kind of a spirit of amity, deference and concession, is that which has put in the power of congress at one stroke to prevent your interference in government, and do away your liberties forever? Does either the situation or circumstances of things warrant it?[34]

2.6.48

Cato.

1. The compromise motion to transmit the Constitution to the states was not passed by the Congress until 28 September, the day after this essay appeared.

2. Joseph Addison, *Cato, A Tragedy*, act 3, sc. 1.

3. The essay of Caesar appeared in the New York *Daily Advertiser* 1 October 1787. It was followed by another essay on 17 October 1787, in response to Cato's second essay. The Caesar essays are reprinted in Ford, *Essays* 279–91. See above, 2.6 intro. n. 6.

4. " '*Teach* the members of the Convention (Cato *very modestly* goes on) that you are capable of supervision of their conduct; the same medium that gave you this system, if it is erroneous, while the door is now open, can make amendments *or give you another.*' O excellent thought, and happily advised! Be clamorous, my friends—be discontented—assert your prerogative—forever assert the power and *majesty of the people*. I am not willing to suspect any man's intentions, when they aim at giving information; but when they come abroad, couched in such *majesterial* terms, I own I feel some indignation. If this demogogue had talents to throw on the subject of legislation, why did he not offer them when the Convention was in session? If they had been judged useful, no doubt they would have been attended to. But is this *now a time* for such insinuations? Has not the wisdom of America been drawn, as it were, into a focus, and the proffered constitution sent forth with a unanimity that is unequaled in ancient or modern story? And shall we now wrangle and find fault with the *excellent whole* because perhaps some of its parts *might have been* more perfect? There is neither virtue or patriotism in such conduct. . . . I would also advise [Cato] to give his vote (as he will probably be one with the Electors) to the American Fabius; it will be more healthy for this country, and *this state*, that he should be induced to accept of the small presidency of the new government, than that he should be solicited again to accept of the command of *an army*." Caesar, *Daily Advertiser* 1 October 1787; Ford, *Essays* 284–85. According to one contemporary report, when Washington was about to sign the Constitution, he said, "should the states reject this excellent Constitution, the probability is that an opportunity will never again offer to cancel another in peace—the next will be drawn in blood." A writer in the *Pennsylvania Journal* 14 November 1787, as quoted by Curtis, *Constitutional History* I, 622. See American 4.20.1 n. 1.

5. "I venerate the memory of the slaughtered patriots of America, and rejoice as much as Cato that they did not bleed in vain, but I would have America profit by their death in a different manner from him. I believe they sought to obtain liberty for no particular State, but for the whole Union, indissolubly connected under one controlling and supreme head." Caesar, *Daily Advertiser* 17 October 1787; Ford, *Essays* 290.

6. Cato here renders Caesar's view more accurately than Cooke, who says that the Caesar letters were filled with an open contempt for the authority of the people, which Caesar would certainly and properly have denied. Jacob E. Cooke, "Alexander Hamilton's Authorship of the 'Caesar' Letters," *William and Mary Quarterly* January 1960, 78–85. The point is of some importance since, if Caesar had thrown doubt not only on the *majesty* and the *judgment* but also on the *authority* of the people, the case against Hamilton's authorship would be strengthened.

Caesar replied: "I am not one of those who gain an influence by cajoling the unthinking mass (tho' I pity their delusions), and ringing in their ears the gracious sound of their *absolute Sovereignty*. I despise the trick of such dirty policy. I know there are Citizens, who, to gain their own private ends, enflame the minds of the well-meaning, tho' less intelligent parts of the community, by sating their vanity with that cordial and unfailing specific, that *all power is seated in the people*. For my part, I am not much attached to the *majesty of the multitude*, and therefore waive all pretensions (founded on such conduct), to their countenance. I consider them in general as very ill qualified to judge for themselves what government will best suit their peculiar situations; nor is this to be wondered at. The science of government is not easily understood. Cato will admit, I presume, that men of good education and deep reflection, only, are judges of the *form* of a government. . . . When a new form of government is fabricated, it lies with the people at large to receive or reject it—that is their *inherent rights*. Now, I would ask (without intending to triumph over the

weakness or follies of any men), how are the people to profit by this inherent right? By what conduct do they discover that they are sensible of their own interests in this situation? Is it by the exercise of a well-disciplined reason, and a correspondent education? I believe not. How then? As I humbly conceive, by a tractable and docile disposition, and by honest men endeavouring to keep their minds easy, while others, of the same disposition, with the advantages of genius and learning, are constructing the bark that may, by the blessing of Heaven, carry them to the port of rest and happiness, if they will embark without diffidence and proceed without mutiny. I know this is blunt and ungracious reasoning; it is the best, however, which I am prepared to offer on this momentous business; and since my own heart does not reproach me, I shall not be very solicitous about its reception. If truth, then, is permitted to speak, the mass of the people of America (any more than the mass of other countries) cannot judge with any degree of precision concerning the fitness of this New Constitution to the peculiar situation of America; they have, however, done wisely in delegating the power of framing a government to those every way worthy and well-qualified. . . ." Caesar, *Daily Advertiser* 17 October 1787; Ford, *Essays* 287–89. Cf. Centinel I, 2.7.3, who agrees that the science of government is so abstruse that few can judge for themselves; he urges that all who are capable should come forward to help the people judge, else they will rely implicitly on the character of the members of the Philadelphia Convention.

7. Following this number of the Cato letters the editor of the *New York Journal* printed the Congressional Resolution of 21 February 1787 and the Resolution of the Senate of New York of 6 March 1787, both of which state the convention to be "for the sole and express purpose of revising the articles of confederation, and reporting to Congress, and the several legislatures, such alterations and provisions therein, as shall, when agreed to in Congress, and confirmed by the states"—the New York resolution reads, "several states"—"render the foederal constitution adequate to the exigencies of government and the preservation of the union."

8. *The Spirit of Laws* VIII, ch. 16. For other arguments in defense of the small republic, see Yates and Lansing 2.3.7; Martin 2.4.44; Centinel I, 2.7.17–19; Federal Farmer II, 2.8.15–19; Brutus I, 2.9.10–21; Old Whig IV, 3.3.20; Pennsylvania Convention Minority 3.11.16–17; [Pennsylvania] Farmer 3.14.7; Agrippa IV, 4.6.16–17; Columbian Patriot 4.28.4; Mercer 5.5.5–6; Cato Uticensis 5.7.6–9; Henry 5.16.11; Mason, Elliot II, 30 (see also 2.2.2); Monroe 5.21.12–13; Smith 6.12.9; Clinton 6.13.14–18. For Federalist responses, see Agrippa IV, 4.6.16 n. 10.

9. See *Second Treatise on Government* XV, sec. 172.

10. *The Spirit of Laws* XI, ch. 6.

11. Cf. *The Federalist* no. 9, 52–53: "When Montesquieu recommends a small extent for republics, the standards he had in view were of dimensions far short of the limits of almost every one of these States. . . . If we therefore take his ideas on this point as the criterion of truth, we shall be driven to the alternative either of taking refuge at once in the arms of monarchy, or of splitting ourselves into an infinity of little, jealous, clashing, tumultuous commonwealths, the wretched nurseries of unceasing discord and the miserable objects of universal pity or contempt. Some of the writers who have come forward on the other side of the question seem to have been aware of the dilemma; and have even been bold enough to hint at the division of the larger States as a desirable thing. Such an infatuated policy, such a desperate expedient, might, by the multiplication of petty offices, answer the views of men who possess not qualifications to extend their influence beyond the narrow circles of personal intrigue, but it could never promote the greatness or happiness of the people of America." As Cooke points out (p. 612, n. 6) Publius is probably referring to Cato's use of Montesquieu. For other suggestions that the states are too large, see Martin 2.4.44; Centinel I, 2.7.19; also Ellsworth, Farrand I, 406 (25 June); Martin, Farrand II, 4 (14 July).

12. *Second Treatise on Government,* IX, sec. 123.

13. The contrast between the frugal, republican, liberty-loving citizens of the North and the luxurious, aristocratic, slave-holding Southerners was a frequent Anti-Federal argument against consolidation, emphasized by the Northerners of

course (Agrippa XII, 4.6.48; Symmes 4.5.2–4) but repeated also by some Southern Anti-Federalists (Federal Farmer V, 2.8.61).

14. Hamilton uses exactly this argument in the New York convention to show that the Constitution will not undermine the states, because the attachments of the people will be to the states and "wherever the popular attachments lie, there will rest the political superiority." He goes on to say of the states, "If they are really useful, if they are calculated to promote the essential interests of the people, they must have their confidence and support." Elliot II, 354–55. The qualification is critical and becomes the basis for the next step in this part of Hamilton's argument. See Brutus XI, 2.9.130 and n. 87, and above, n. 11.

15. *The Spirit of Laws* II, ch. 3.

16. Ibid. VIII, ch. 16.

17. Cf. Publius' argument for reeligibility of the President, which is directly in point: there is no way of withholding from an ambitious President enough power to ruin his country—if he is not given it, he will seize it. The solution must be sought rather in an arrangement that makes his interest coincide with his duties and that encourages him to gratify, with projects for the public benefit, his higher passions rather than his lower ones. *The Federalist* no. 72; see Federal Farmer XIV, 2.8.178; Cato [South Carolina] 5.10.2.

18. *The Spirit of Laws* III, ch. 5. For other expressions of a concern with the ridicule of virtue see Columbian Patriot 4.28.8; Smith 6.12.9.

19. See An American Citizen (Tench Coxe), who argues, on the contrary, that the differences with England "did not arise so much from objections to the form of government, though undoubtedly a better one by far is now within our reach. . . ." Ford, *Pamphlets* 136ff.

20. Cf. *The Federalist* no. 69, where the presidency is compared with the king of England and the governor of New York. The alleged similarities and differences between the presidency and the British king were of course common themes on both sides. The main references are collected below, Philadelphiensis XII, 3.9.96 n. 37. For a general comparison of the new Constitution and the Constitution of New York, see Sydney 6.9.

21. Sir Edward Coke, *Institutes* II, *proem.* See below, Clinton 6.13.10 n. 5. For other examples of this widespread argument that the Constitution is dangerously vague, see Brutus VI, 2.9.77; Bostonian 4.21.1; Columbian Patriot, 4.28.2; Henry 5.16.2; Denatus 5.18.5. Henry told the Virginia ratifying convention, "A constitution, sir, ought to be like a beacon, held up to the public eye, so as to be understood by every man." Elliot III, 579. For Federalist defenses of the language of the Constitution, see A Landholder, Ford, *Essays* 156; Ames, Elliot II, 155.

22. Richard Hooker, *Of the Laws of Ecclesiastical Policy* I, ch. 10, sec. 5; quoted by Locke, *Second Treatise on Government* VIII, sec. 111. Cf. [Thomas Gordon and John Trenchard], *Cato's Letters, or Essays on Liberty, Civil and Religious, and Other Important Subjects*, 3d ed. (London 1733) II, no. 45 (16 September 1721).

23. See Federal Farmer VIII, 2.8.105 n. 68.

24. See Algernon Sidney, *Discourses Concerning Government* II, sec. 21; Montesquieu, *The Spirit of Laws* II, ch. 3; *Considerations on the Greatness of the Romans and Their Decline* ch. 1. John Williams repeats the argument of this paragraph, often in the same words, in the debate of the New York convention, 21 June 1788, Elliot II, 242.

25. Sidney, *Discourses* II, secs. 23, 28.

26. The Constitution does not of course give the executive any more such power, as Publius shows forcefully in *The Federalist* no. 67, which is largely devoted to an indignant refutation of this "misrepresentation," which Publius cites "as a sample of the general spirit" of criticism of the provision for the Executive.

27. Part of John Williams' speech of 21 June 1788 in the New York ratifying convention is taken directly from this paragraph. Elliot II, 242.

28. See Brutus III, 2.9.42–44; IV, 2.9.46–48.

29. Publius agrees that poll taxes are undesirable and hopes that they will not be introduced. However, "There may exist certain critical and tempestuous conjunctures of the State, in which a poll tax may become an inestimable resource. And

as I know nothing to exempt this portion of the globe from the common calamities that have befallen other parts of it, I acknowledge my aversion to every project that is calculated to disarm the government of a single weapon, which in any possible contingency might be usefully employed for the general defense and security." *The Federalist* no. 36.

30. For other Anti-Federal discussions of the "natural aristocracy" see Federal Farmer VII, 2.8.97 n. 64.

31. Cf. Montesquieu, *The Spirit of Laws* XI, ch. 6; and Hume's essay, "Whether the British Government Inclines More to Absolute Monarchy or to a Republic," *Essays, Moral, Political, and Literary*, ed. T. H. Green and T. H. Grose (London 1882) I. Cato's interpretation of both authors is doubtful.

32. Demosthenes, *Second Philippic Oration* sec. 24.

33. *The Spirit of Laws* V, ch. 7.

34. Cato leaves undiscussed three heads of his list in V, 2.6.35: the provisions of the Constitution regarding standing armies, the militia, and the slave trade.

Letters of Centinel

(PHILADELPHIA) INDEPENDENT GAZETTEER
and
(PHILADELPHIA) FREEMAN'S JOURNAL
October 1787–April 1788

The most prolific and one of the best known of the Anti-Federalist essayists was the Centinel, whose essays appeared in the Philadelphia *Independent Gazetteer* and the Philadelphia *Freeman's Journal* and were widely reprinted, although not in their entirety.[1] The first two numbers were printed in numerous newspapers and also appeared separately as broadsides.[2] The first nine letters were reprinted in an Anti-Federalist collection, issued in New York in 1788.[3]

There are three groups of Centinel essays. The first eighteen numbers, published between 5 October 1787 and 9 April 1788, discuss the principles of the new Constitution and of its advocates. Papers XIX to XXIV, published in October and November 1788, were aimed at influencing the election of representatives to the new Congress, the Constitution having been adopted; they are concerned chiefly with party politics in Pennsylvania, past and present, and with the financial affairs of Robert Morris and his associates. Finally, in the autumn of 1789, there appeared another dozen essays under the heading "Centinel Revived," which deal with the proposed amendments to the federal Constitution and with the state constitution and state political affairs. Only the first group is reprinted here.

The Centinel letters were generally attributed at the time to Judge George Bryan, a prominent Pennsylvania legislator and judge, who was the principal leader of the Anti-Federalists in his state. However, Judge Bryan's son, Samuel, claimed to be the author in several private letters;[4] and it is now generally thought that he was the author, although reflecting the views of and no doubt working in close collaboration with his father.[5]

Centinel does not present systematic arrangement and development of argument, like, say, the letters of The Federal Farmer, or the essays of Cato or Brutus; his essays are rather like a series of partially spontaneous speeches made over a period of time to a shifting and somewhat inattentive audience. Variations on a set of themes rather than a schematic development of themes is Centinel's style. Typically he starts an essay by going over some of the ground of the last one, sometimes moving on to new

matters, sometimes developing themes barely mentioned before, sometimes substantially repeating earlier arguments. Centinel tends to lay his heaviest emphasis on rather shallow statements of certain standard themes—the importance of resisting the influence of great names, the critical position of the press and the attempts by Federalists to stifle it, the various nefarious practices indulged in by the friends of the Constitution, etc. The more significant and substantial arguments typically spin out from these primary themes.

Except for their length and their notoriety, it can hardly be maintained, as Konkle attempts to do, that "these papers at once took rank, on their side, with *The Federalist* papers on the other."[6] There are substantial and important arguments, in addition to information of a historical interest, scattered throughout the papers; but the papers do not, taken as a whole, compare in quality with the best Anti-Federalist writing, to say nothing of *The Federalist*. The first essay is indeed of major importance in the corpus of Anti-Federalist writings; the second essay is important; the fourth, fifth, sixth, and eleventh contain material of interest to the student of Anti-Federalist ideas; the remaining essays will properly be passed over by most nonspecialist readers. There follows a brief description of the content of each essay.

In his first essay, Centinel, after urging the need for dispassionate and deliberate examination, turns to a discussion of John Adams' principle of balanced government. Centinel objects that, first, there is not human wisdom enough to construct such a government; second, it would not last; third, it would not, in any case, answer the purpose of preserving liberty. The correct principle of free government is responsibility of the government to the people where the people are virtuous and property is pretty equally distributed. Thus the best government has a simple structure, short terms of office, rotation, etc. The proposed Constitution is *neither* balanced, as Adams wants, *nor* responsible, as Centinel thinks best. Centinel next turns to the powers of the Congress under the new Constitution, concluding with the warning that it is the opinion of all writers that a very extensive country cannot be governed on democratic principles except by a confederation of a number of smaller republics (2.7.11–19). He then discusses the structure of the new government, concluding that the Senate will be the great efficient body and that the government will be in practice an irresponsible aristocracy. Finally Centinel objects that no provision has been made for the liberty of the press or for jury trial.

Repeating the need for fundamental and free discussion, free of the "splendor of names," Centinel turns in his second essay to a point-by-point refutation of one of the most influential Federalist statements, James Wilson's brief address to the citizens of Philadelphia on 6 October.[7] Centinel argues that the powers of the federal government, particularly in the area of taxation and the judiciary, will destroy the states and endanger the freedom of the press and personal liberty, which are unprotected by a bill of rights.

He argues that no standing army should be permitted in time of peace except with the vote of two-thirds of the legislature, that the Senate will become the nucleus of a permanent aristocracy, that the provisions for amendment are illusory, and that the opposition to the Constitution, far from consisting of interested men, includes the respectable yeomen, a number of the members of the Philadelphia Convention, and the majority of the Congress.

The third essay begins with repetition of earlier arguments about the importance of the decision to be made, the need for fundamental investigation, and the dubious motives of the Federalists. Centinel describes the events leading to the Constitution and its ratification in Pennsylvania, which show an intention to establish a new permanent aristocracy, hidden by the old forms. He goes on to criticize the power given to the Congress to alter state regulations regarding the times, places, and manner of holding elections for the federal congress, for calling forth the militia, and for protecting the slave trade for a period of twenty years—this last being the only significant contribution of this paper (2.7.76). He concludes with an expression of surprise at Quaker support of the Constitution and a reference to Brutus' discussion of the impracticability of maintaining a free government over so extensive a territory.

The fourth essay is more substantial. Here Centinel contends that the present difficulties of the United States are due to the enormous demands of financing the Revolution rather than to intrinsic deficiencies in the Articles of Confederation. Warning against the danger of governing overmuch and thus weakening the people's sense of obligation and duty, so important in free government, Centinel argues that the only amendment necessary is one giving Congress the power to lay an impost on commerce and to regulate trade. He concludes by yet again discoursing on the secrecy with which the Constitution was formulated, the stifling of discussion, the reliance on great names, the exaggeration of present distresses, the attempt to represent the new government as the only alternative, the weight of the opposition, and the need for reconsideration.

The fifth essay is cast in the form of a reply to a remark by James Wilson in the Pennsylvania ratifying convention that a consolidation of the United States would be improper. It is largely a repetition of arguments made in numbers I and II about the extensive powers of the general government under the new Constitution, but Centinel discusses the "necessary and proper" clause for the first time and rebuts Wilson's argument that the Constitution requires the preservation of the states by showing that the states might become mere boards of election and eventually (by means of Congress's ultimate power to provide for elections) be eliminated altogether. This paper contains brief but interesting remarks on dual sovereignty (2.7.99–100) and on the object of government being to check and control the ambitious and designing (2.7.101).

Commenting on the "incredible transition" of a people once full of zest

for liberty now about to sacrifice it, ignoring acknowledged danger in the new Constitution "in order to reap the golden harvest of regulated commerce," Centinel expatiates in his sixth essay on the lust of dominion and the need to guard against it in establishing political systems: "the great end of civil government is to protect the weak from the oppression of the powerful to put every man upon the level of equal liberty. . . ." (2.7.107).

The seventh essay contains nothing of substance. Centinel goes beyond his earlier remarks only in the strength of his denunciation of the Pennsylvania Federalists and in his suggestion that, despite the favorable action of the Pennsylvania convention, the people, aroused by "the enlightened pen of patriotism," will "assert their liberty, if necessary, by the sword" (2.7.116). He ends by calling for a second convention.

The eighth essay contains further reflections on the benefits of freedom, the dangers of the new Constitution, the corrupt character and treasonable activities of the advocates of the Constitution, concealed behind such respected names as Washington. The essay adds little to previous discussions except violence of language and a remark on the character of the merchant who, immersed in his narrow schemes of wealth, is the last to see a threat to public liberty (2.7.126).

Essay IX opens with praise of the Pennsylvania constitution as the triumph of patriotism over ambition, a victory which the well-born few seek to overturn. The Constitution contains a mere pretense of reservations in favor of liberty and is in fact a surrender at will and pleasure to our rulers. The illicit activities of the Federalists are further traced.

The tenth essay describes the success of the press in rousing the people to the dangers of the Constitution and the reaction of James Wilson and the Federalists in establishing a committee to collect funds to increase the stream of Federalist propaganda and to prepare for the use of force if necessary.

In his eleventh essay Centinel returns to more systematic argument. There are three arguments chiefly relied upon by the advocates of the Constitution: (1) the distresses of the community, (2) the evils of anarchy, (3) and the horrible consequences of the dissolution of the Union. The first having been treated in previous papers, Centinel here discusses the second and third, arguing that even anarchy is preferable to certain despotism because good government may grow out of it, that in any case anarchy is more likely if the Constitution is adopted than if it is not, that the event of separate confederacies is improbable—is in fact a hobgoblin sprung from the brain of the author of *The Federalist*—and that, even admitting that disunion would be the result of rejection of the Constitution, occasional wars are preferable to despotism. Centinel closes with a complaint about the Post Office suppression of the circulation of newspapers from state to state.

In the twelfth essay Centinel defends his contention that the activities of the proponents of the Constitution constitute a conspiracy, by exposing

their sensitiveness to the charge, their reliance on the authority of names, their precipitation in such places as Massachusetts, and their attempt to shackle the press, particularly in Pennsylvania.

The thirteenth essay contains further denunciations of the activity of the "conspirators," ending with a call for the establishment of local societies by and communication among the "patriots" to "frustrate the machinations of an ambitious junto" (2.7.160).

In his fourteenth essay *Centinel* presents extensive extracts from Luther Martin's Genuine Information to prove that the new Constitution does not and was not intended to establish a federal government but provides instead for a consolidation. He ends with further discussion of the suppression of the circulation of Anti-Federalist newspapers.

Returning to the theme of the first essay, Centinel observes in his fifteenth paper that, the science of government being most difficult and abstruse, men are likely to be imposed on by the artful and designing, particularly at times like the present, when the healthy distrust of innovation has been lost. The bulk of the paper is devoted to a consideration of the Massachusetts ratification, showing that circumstances in Massachusetts led many men of property to join the Federalist conspiracy, that the elections were held in the heat of enthusiasm, and that few able Anti-Federalists were elected, and that even so, the Constitution was ratified by a bare majority and with qualifying amendments.

In his sixteenth essay Centinel argues that the ex post facto provision precludes the new Congress from taking measures to compel public defaulters to render an account. If Congress should desire nevertheless to secure the money for the government, the members would be precluded by their oath to support the Constitution; and if they proceeded nevertheless, they would be restrained by the Supreme Court, which (Centinel argues here) will have the power to construe the Constitution in last resort. The failure to secure the old debts due to the United States would also be unjust to certain states, like Pennsylvania, which had made unusual exertions to meet their obligations, and would give unfair advantage to the delinquent states.

Centinel devotes the first part of his seventeenth essay to a continuation of his argument that the Constitution was intended to screen public defaulters, discussing particularly the financial affairs of Robert Morris and of General Thomas Mifflin, the quartermaster general. He alludes again to the Post Office "suppression" of "patriotic" newspapers and concludes with a defense of Anti-Federalist writer, Benjamin Workman, against the attack of Francis Hopkinson.

The eighteenth and last essay contains further discussion of the insidious measures taken to promote the establishment of the Constitution, particularly the propagation of false information of unanimous Federalist sentiment

in various parts of the country and the muzzling of the press. The strength of Anti-Federalist sentiment in Pennsylvania is described. The Centinel retains his anonymity in order to avoid mere personal attacks, which would deflect attention from the proper object.

1. With the exception of the second essay, the essays appeared first in the *Independent Gazetteer*. Most but not all were printed shortly thereafter in the *Freeman's Journal*.

2. It was these broadsides, presumably, that were distributed by the New York Federal Republican Committee. See Main, *Antifederalists* 235.

3. *Observations on the Proposed Constitution for the United States of America, Clearly Shewing It To Be a Complete System of Aristocracy and Tyranny and Destructive of the Rights and Liberties of the People* (New York 1788. Contains, in addition to the Centinel essays, the Address and Reasons of Dissent of the Minority of the Pennsylvania Convention [below, 3.11], Edmund Randolph's letter of 10 October 1787 to the Speaker of the Virginia House of Delegates [above, 2.5] and the proposed Constitution).

4. According to McMaster and Stone, whose source is a private communication from the historian Paul Leicester Ford, Samuel Bryan wrote to George Clinton, saying, "I have not the honor of being personally known to your Excellency, but . . . I flatter myself that in the character of Centinel I have been honored with your approbation and esteem." McMaster and Stone 6–7n. Burton Konkle's version of the letter is significantly different: ". . . I flatter myself that in the character of Centinel I, I have been honored with your approbation and esteem." Burton Alva Konkle, *George Bryan and the Constitution of Pennsylvania, 1731–1791* (Philadelphia 1922) 309. The correct version is probably McMaster and Stone's, which Konkle seems to have misread. The original letter has been lost. Samuel Bryan also claimed authorship of Centinel in letters to Thomas Jefferson, 27 February 1801 and 24 July 1807, and to Albert Gallatin, 18 December 1790. Files of Ratification of the Constitution Project, National Archives. See Pennsylvania Convention Minority 3.11.2 n. 2.

5. McMaster and Stone 6–7. A contemporary critic referred to "the author (I should have said authors) of illiberal and scandalous performance. . . ." A Federalist, *Independent Gazetteer* 25 October 1787, McMaster and Stone 166.

Konkle reflects all the uncertainties involved. First he contends that "there can be as little doubt that Samuel Bryan was the author of them all, as that they expressed in fullness and accuracy the sentiments and convictions of Justice Bryan." *George Bryan* 309. Or perhaps the father wrote them: "No one familiar with Justice Bryan's writing but can see the Bryanesque ear-marks in both style and verbal expression in this paper [I], as well as the rest." Ibid. 310–11; cf. 320. The father must have written one of them: "There is a wealth of legal knowledge in this paper [II] that sounds very much like Justice Bryan, rather than the son, so that one is inclined to feel that, even though the son wrote 'No. I,' the father must have written 'No. II.' " Ibid. 313.

6. Ibid. 309.

7. See below, 2.7.35 n. 14. Konkle suggests, "It would seem as though Mr. Wilson's speech of the 6th had *Centinel*'s paper of the 5th in contemplation, as *Centinel No. II* did his of the 6th of October." Ibid. p. 313. But the supposition is unlikely. Wilson would barely have had time to read the first number of Centinel and formulate his reply, and according to his biographer, Wilson spent much time and thought in preparing the address. Charles Page Smith, *James Wilson, Founding Father, 1742–1798* (Chapel Hill 1956) 264–65. Moreover, Wilson does not reply to the most interesting part of Centinel's argument, that dealing with responsibility, and he does not follow Centinel's more detailed argument. It is more likely that Wilson was replying to arguments made in the legislature, at the early sessions of the state ratifying convention, and particularly by the sixteen seceders from the Pennsylvania Assembly. See below, 3.2.

I

MR. OSWALD,

As the Independent Gazetteer seems free for the discussion of all public matters, I expect you will give the following a place in your next.

To the Freemen of Pennsylvania.

Friends, Countrymen and Fellow Citizens,

2.7.1 Permit one of yourselves to put you in mind of certain *liberties* and *privileges* secured to you by the constitution of this commonwealth, and to beg your serious attention to his uninterested opinion upon the plan of federal government submitted to your consideration, before you surrender these great and valuable privileges up forever. Your present frame of government, secures to you a right to hold yourselves, houses, papers and possessions free from search and seizure, and therefore warrants granted without oaths or affirmations first made, affording sufficient foundation for them, whereby any officer or messenger may be commanded or required to search your houses or seize your persons or property, not particularly described in such warrant, shall not be granted. Your constitution further provides "that in controversies respecting property, and in suits between man and man, the parties have a right *to trial by jury, which ought to be held sacred.*" It also provides and declares, "*that the people have a right of* FREEDOM OF SPEECH, *and of* WRITING *and* PUBLISHING *their sentiments, therefore* THE FREEDOM OF THE PRESS OUGHT NOT TO BE RESTRAINED."[1] The constitution of Pennsylvania is *yet* in existence, *as yet* you have the right to *freedom of speech*, and of *publishing your sentiments*. How long those rights will appertain to you, you yourselves are called upon to say, whether your *houses* shall continue to be your *castles;* whether your *papers*, your *persons* and your *property*, are to be held sacred and free from *general warrants*, you are now to determine. Whether the *trial by jury* is to continue as your birth-right, the freemen of Pennsylvania, nay, of all America, are now called upon to declare.

2.7.2 Without presuming upon my own judgement, I cannot think it an unwarrantable presumption to offer my private opinion, and call upon others for their's; and if I use my pen with the boldness of a freeman, it is because I know that *the liberty of the press yet remains unviolated,* and *juries yet are judges.*

2.7.3 The late Convention have submitted to your consideration a plan of a new federal government—The subject is highly interesting to your future welfare—Whether it be calculated to promote the great ends of civil society, *viz.* the happiness and prosperity of the community; it behoves you well to consider, uninfluenced by the authority of names. Instead of that frenzy of

enthusiasm, that has actuated the citizens of Philadelphia, in their approbation of the proposed plan, before it was possible that it could be the result of a rational investigation into its principles; it ought to be dispassionately and deliberately examined, and its own intrinsic merit the only criterion of your patronage. If ever free and unbiassed discussion was proper or necessary, it is on such an occasion.—All the blessings of liberty and the dearest privileges of freemen, are now at stake and dependent on your present conduct. Those who are competent to the task of developing the principles of government, ought to be encouraged to come forward, and thereby the better enable the people to make a proper judgment; for the science of government is so abstruse, that few are able to judge for themselves; without such assistance the people are too apt to yield an implicit assent to the opinions of those characters, whose abilities are held in the highest esteem, and to those in whose integrity and patriotism they can confide; not considering that the love of domination is generally in proportion to talents, abilities, and superior acquirements; and that the men of the greatest purity of intention may be made instruments of despotism in the hands of the *artful and designing*. If it were not for the stability and attachment which time and habit gives to forms of government, it would be in the power of the enlightened and aspiring few, if they should combine, at any time to destroy the best establishments, and even make the people the instruments of their own subjugation.

2.7.4 The late revolution having effaced in a great measure all former habits, and the present institutions are so recent, that there exists not that great reluctance to innovation, so remarkable in old communities, and which accords with reason, for the most comprehensive mind cannot foresee the full operation of material changes on civil polity; it is the genius of the common law to resist innovation.

2.7.5 The wealthy and ambitious, who in every community think they have a right to lord it over their fellow creatures, have availed themselves, very successfully, of this favorable disposition; for the people thus unsettled in their sentiments, have been prepared to accede to any extreme of government; all the distresses and difficulties they experience, proceeding from various causes, have been ascribed to the impotency of the present confederation, and thence they have been led to expect full relief from the adoption of the proposed system of government; and in the other event, immediately ruin and annihilation as a nation. These characters flatter themselves that they have lulled all distrust and jealousy of their new plan, by gaining the concurrence of the two men in whom America has the highest confidence, and now triumphantly exult in the completion of their long meditated schemes of power and aggrandisement. I would be very far from insinuating that the two illustrious personages alluded to, have not the welfare of their country at heart; but that the unsuspecting goodness and zeal of the one, has been imposed on, in a subject of which he must be necessarily

inexperienced, from his other arduous engagements; and that the weakness and indecision attendant on old age, has been practised on in the other.[2]

2.7.6 I am fearful that the principles of government inculcated in Mr. Adams's treatise,[3] and enforced in the numerous essays and paragraphs in the newspapers, have misled some well designing members of the late Convention.—But it will appear in the sequel, that the construction of the proposed plan of government is infinitely more extravagant.

2.7.7 I have been anxiously expecting that some enlightened patriot would, ere this, have taken up the pen to expose the futility, and counteract the baneful tendency of such principles. Mr. Adams's *sine qua non* of a good government is three balancing powers, whose repelling qualities are to produce an equilibrium of interests, and thereby promote the happiness of the whole community. He asserts that the administrators of every government, will ever be actuated by views of private interest and ambition, to the prejudice of the public good; that therefore the only effectual method to secure the rights of the people and promote their welfare, is to create an opposition of interests betweeen the members of two distinct bodies, in the exercise of the powers of government, and balanced by those of a third.[4] This hypothesis supposes human wisdom competent to the task of instituting three co-equal orders in government, and a corresponding weight in the community to enable them respectively to exercise their several parts, and whose views and interests should be so distinct as to prevent a coalition of any two of them for the destruction of the third. Mr. Adams, although he has traced the constitution of every form of government that ever existed, as far as history affords materials, has not been able to adduce a single instance of such a government; he indeed says that the British constitution is such in theory, but this is rather a confirmation that his principles are chimerical and not to be reduced to practice. If such an organization of power were practicable, how long would it continue? not a day—for there is so great a disparity in the talents, wisdom and industry of mankind, that the scale would presently preponderate to one or the other body, and with every accession of power the means of further increase would be greatly extended. The state of society in England is much more favorable to such a scheme of government than that of America. There they have a powerful hereditary nobility, and real distinctions of rank and interests; but even there, for want of that perfect equallity of power and distinction of interests, in the three orders of government, they exist but in name; the only operative and efficient check, upon the conduct of administration, is the sense of the people at large.

2.7.8 Suppose a government could be formed and supported on such principles, would it answer the great purposes of civil society; if the administrators of every government are actuated by views of private interest and ambition, how is the welfare and happiness of the community to be the result of such jarring adverse interests?

2.7.9 Therefore, as different orders in government will not produce the good of

the whole, we must recur to other principles. I believe it will be found that the form of government, which holds those entrusted with power, in the greatest responsibility to their constitutents, the best calculated for freemen.[5] A republican, or free government, can only exist where the body of the people are virtuous, and where property is pretty equally divided[;] in such a government the people are the sovereign and their sense or opinion is the criterion of every public measure; for when this ceases to be the case, the nature of the government is changed, and an aristocracy, monarchy or despotism will rise on its ruin. The highest responsibility is to be attained, in a simple structure of government, for the great body of the people never steadily attend to the operations of government, and for want of due information are liable to be imposed on—If you complicate the plan by various orders, the people will be perplexed and divided in their sentiments about the source of abuses or misconduct, some will impute it to the senate, others to the house of representatives, and so on, that the interposition of the people may be rendered imperfect or perhaps wholly abortive. But if, imitating the constitution of Pennsylvania, you vest all the legislative power in one body of men (separating the executive and judicial) elected for a short period, and necessarily excluded by rotation from permanency, and guarded from precipitancy and surprise by delays imposed on its proceedings, you will create the most perfect responsibility for then, whenever the people feel a grievance they cannot mistake the authors, and will apply the remedy with certainty and effect, discarding them at the next election. This tie of responsibility will obviate all the dangers apprehended from a single legislature, and will the best secure the rights of the people.

Having premised this much, I shall now proceed to the examination of the proposed plan of government, and I trust, shall make it appear to the meanest capacity, that it has none of the essential requisites of a free government; that it is neither founded on those balancing restraining powers, recommended by Mr. Adams and attempted in the British constitution, or possessed of that responsibility to its constituents, which, in my opinion, is the only effectual security for the liberties and happiness of the people; but on the contrary, that it is a most daring attempt to establish a despotic aristocracy among freemen, that the world has ever witnessed. 2.7.10

I shall previously consider the extent of the powers intended to be vested in Congress, before I examine the construction of the general government. 2.7.11

It will not be controverted that the legislative is the highest delegated power in government, and that all others are subordinate to it. The celebrated *Montesquieu* establishes it as a maxim, that legislation necessarily follows the power of taxation.[6] By sect. 8, of the first article of the proposed plan of government, "the Congress are to have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and *general welfare* of the United States; but all duties, imposts and excises, shall be uniform throughout the United States." Now

what can be more comprehensive than these words; not content by other sections of this plan, to grant all the great executive powers of a confederation, and a STANDING ARMY IN TIME OF PEACE, that grand engine of oppression, and moreover the absolute controul over the commerce of the United States and all external objects of revenue, such as unlimited imposts upon imports, etc.—they are to be vested with every species of *internal* taxation; —whatever taxes, duties and excises that they may deem requisite for the *general welfare*, may be imposed on the citizens of these states, levied by the officers of Congress, distributed through every district in America; and the collection would be enforced by the standing army, however grievous or improper they may be. The Congress may construe every purpose for which the state legislatures now lay taxes, to be for the *general welfare*, and thereby seize upon every object of revenue.

2.7.12 The judicial power by 1st sect. of article 3 ["]shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made or which shall be made under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admirality and maritime jurisdiction, to controversies to which the United States shall be a party, to controversies between two or more states, between a state and citizens of another state, between citizens of different states, between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects."

2.7.13 The judicial power to be vested in one Supreme Court, and in such Inferior Courts as the Congress may from time to time ordain and establish.

2.7.14 The objects of jurisdiction recited above, are so numerous, and the shades of distinction between civil causes are oftentimes so slight, that it is more than probable that the state judicatories would be wholly superceded; for in contests about jurisdiction, the federal court, as the most powerful, would ever prevail. Every person acquainted with the history of the courts in England, knows by what ingenious sophisms they have, at different periods, extended the sphere of their jurisdiction over objects out of the line of their institution, and contrary to their very nature; courts of a criminal jurisdiction obtaining cognizance in civil causes.

2.7.15 To put the omnipotency of Congress over the state government and judicatories out of all doubt, the 6th article ordains that "this constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the *supreme law of the land*, and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding."

2.7.16 By these sections the all-prevailing power of taxation, and such extensive legislative and judicial powers are vested in the general government, as must in their operation, necessarily absorb the state legislatures and judicatories; and that such was in the contemplation of the framers of it, will appear from

the provision made for such event, in another part of it; (but that, fearful of alarming the people by so great an innovation, they have suffered the forms of the separate governments to remain, as a blind.) By sect. 4th of the 1st article, "the times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; *but the Congress may at any time, by law, make or alter such regulations, except as to the place of chusing senators.*" The plain construction of which is, that when the state legislatures drop out of sight, from the necessary operation of this government, then Congress are to provide for the election and appointment of representatives and senators.

If the foregoing be a just comment—if the United States are to be melted down into one empire, it becomes you to consider, whether such a government, however constructed, would be eligible in so extended a territory; and whether it would be practicable, consistent with freedom? It is the opinion of the greatest writers, that a very extensive country cannot be governed on democratical principles, on any other plan, than a confederation of a number of small republics, possessing all the powers of internal government, but united in the management of their foreign and general concerns. 2.7.17

It would not be difficult to prove, that any thing short of despotism, could not bind so great a country under one government; and that whatever plan you might, at the first setting out, establish, it would issue in a depotism. 2.7.18

If one general government could be instituted and maintained on principles of freedom, it would not be so competent to attend to the various local concerns and wants, of every particular district[,] as well as the peculiar governments, who are nearer the scene, and possessed of superior means of information[;] besides, if the business of the *whole* union is to be managed by one government, there would not be time. Do we not already see, that the inhabitants in a number of larger states, who are remote from the seat of government, are loudly complaining of the inconveniencies and disadvantages they are subjected to on this account, and that, to enjoy the comforts of local government, they are separating into smaller divisions.[7] 2.7.19

Having taken a review of the powers, I shall now examine the construction of the proposed general government. 2.7.20

Art. 1. sect. 1. "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a senate and house of representatives." By another section, the president (the principal executive officer) has a conditional controul over their proceedings.

Sect. 2. "The house of representatives shall be composed of members chosen every second year, by the people of the several states. The number of representatives shall not exceed one for every 30,000 inhabitants."

The senate, the other constituent branch of the legislature, is formed by the legislature of each state appointing two senators, for the term of six years.

The executive power by Art. 2, sec. 1. is to be vested in a president of the United States of America, elected for four years: Sec. 2. gives him "power, 2.7.21

by and with the consent of the senate to make treaties, provided two thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law, etc. And by another section he has the absolute power of granting reprieves and pardons for treason and all other high crimes and misdemeanors, except in case of impeachment.

The foregoing are the outlines of the plan.

2.7.22 Thus we see, the house of representatives, are on the part of the people to balance the senate, who I suppose will be composed of the *better sort*, the *well born*, etc. The number of the representatives (being only one for every 30,000 inhabitants) appears to be too few, either to communicate the requisite information, of the wants, local circumstances and sentiments of so extensive an empire, or to prevent corruption and undue influence, in the exercise of such great powers; the term for which they are to be chosen, too long to preserve a due dependence and accountability to their constituents; and the mode and places of their election not sufficiently ascertained, for as Congress have the controul over both, they may govern the choice, by ordering the *representatives* of a *whole* state, to be *elected* in *one* place, and that too may be the most *inconvenient*.

2.7.23 The senate, the great efficient body in this plan of government, is constituted on the most unequal principles. The smallest state in the union has equal weight with the great states of Virginia, Massachusetts, or Pennsylvania—The Senate, besides its legislative functions, has a very considerable share in the Executive; none of the principal appointments to office can be made without its advice and consent. The term and mode of its appointment, will lead to permanency; the members are chosen for six years, the mode is under the controul of Congress, and as there is no exclusion by rotation, they may be continued for life, which, from their extensive means of influence, would follow of course. The President, who would be a mere pageant of state, unless he coincides with the views of the Senate, would either become the head of the aristocratic junto in that body, or its minion; besides, their influence being the most predominant, could the best secure his re-election to office. And from his power of granting pardons, he might skreen from punishment the most treasonable attempts on the liberties of the people, when instigated by the Senate.

2.7.24 From this investigation into the organization of this government, it appears that it is devoid of all responsibility or accountability to the great body of the people, and that so far from being a regular balanced government, it would be in practice a *permanent* ARISTOCRACY.

2.7.25 The framers of it[,] actuated by the true spirit of such a government, which ever abominates and suppresses all free enquiry and discussion, have made no provision for the *liberty of the press*, that grand *palladium of freedom*, and *scourge of tyrants;* but observed a total silence on that head. It

is the opinion of some great writers, that if the liberty of the press, by an institution of religion, or otherwise, could be rendered *sacred,* even in *Turkey*, that despotism would fly before it.[8] And it is worthy of remark, that there is no declaration of personal rights, premised in most free constitutions; and that trial by *jury* in *civil* cases is taken away; for what other construction can be put on the following, viz. Article III. Sect. 2d. "In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have *original* jurisdiction. In all the other cases above mentioned, the Supreme Court shall have *appellate* jurisdiction, both as to *law and fact?*" It would be a novelty in jurisprudence, as well as evidently improper to allow an appeal from the verdict of a jury, on the matter of fact; therefore, it implies and allows of a dismission of the jury in civil cases, and especially when it is considered, that jury trial in criminal cases is expresly stipulated for, but not in civil cases.

But our situation is represented to be so *critically* dreadful, that, however reprehensible and exceptionable the proposed plan of government may be, there is no alternative, between the adoption of it and absolute ruin.—My fellow citizens, things are not at that crisis, it is the argument of tyrants; the present distracted state of Europe secures us from injury on that quarter, and as to domestic dissentions, we have not so much to fear from them, as to precipitate us into this form of government, without it is a safe and a proper one. For remember, of all *possible* evils, that of *despotism* is the *worst* and the most to be *dreaded*. 2.7.26

Besides, it cannot be supposed, that the first essay on so difficult a subject, is so well digested, as it ought to be,—if the proposed plan, after a mature deliberation, should meet the approbation of the respective States, the matter will end; but if it should be found to be fraught with dangers and inconveniencies, a future general Convention being in possession of the objections, will be the better enabled to plan a suitable government. 2.7.27

Who's here so base, that would a bondman be?
If any, speak; for him have I offended.
Who's here so vile, that will not love his country?
If any, speak; for him have I offended.[9]

Centinel.

II[10]

To the People of Pennsylvania.

Friends, Countrymen, and Fellow-Citizens, 2.7.28

As long as the liberty of the press continues unviolated, and the people have the right of expressing and publishing their sentiments upon every

public measure, it is next to impossible to enslave a free nation. The state of society must be very corrupt and base indeed, when the people in possession of such a monitor as the press, can be induced to exchange the heaven-born blessings of liberty for the galling chains of despotism.—Men of an aspiring and tyrannical disposition, sensible of this truth, have ever been inimical to the press, and have considered the shackling of it, as the first step towards the accomplishment of their hateful domination, and the entire suppression of all liberty of public discussion, as necessary to its support.—For even a standing army, that grand engine of oppression, if it were as numerous as the abilities of any nation could maintain, would not be equal to the purposes of despotism over an enlightened people.

2.7.29 The abolition of that grand palladium of freedom, the liberty of the press, in the proposed plan of government, and the conduct of its authors, and patrons, is a striking exemplification of these observations. The reason assigned for the omission of a *bill of rights*, securing the *liberty of the press*, and *other invaluable personal rights*, is an insult on the understanding of the people.

2.7.30 The injunction of secrecy imposed on the members of the late Convention during their deliberations, was obviously dictated by the genius of Aristocracy; it was deemed impolitic to unfold the principles of the intended government to the people, as this would have frustrated the object in view.

2.7.31 The projectors of the new plan, supposed that an ex parte discussion of the subject, was more likely to obtain unanimity in the Convention; which would give it such a sanction in the public opinion, as to banish all distrust, and lead the people into an implicit adoption of it without examination.

2.7.32 The greatest minds are forcibly impressed by the immediate circumstances with which they are connected; the particular sphere men move in, the prevailing sentiments of those they converse with, have an insensible and irresistible influence on the wisest and best of mankind; so that when we consider the abilities, talents, ingenuity and consummate address of a number of the members of the late Convention, whose principles are despotic, can we be surprised that men of the best intentions have been misled in the difficult science of government? Is it derogating from the character of the *illustrious and highly revered* WASHINGTON, to suppose him fallible on a subject that must be in a great measure novel to him?—As a patriotic hero, he stands unequalled in the annals of time.

2.7.33 The new plan was accordingly ushered to the public with such a splendor of names, as inspired the most unlimited confidence; the people were disposed to receive upon trust, without any examination on their part, what would have proved either a *blessing* or a *curse* to them and their posterity.—What astonishing infatuation! to stake their happiness on the wisdom and integrity of any set of men! In matters of infinitely smaller concern, the dictates of prudence are not disregarded! The celebrated *Montesquieu*, in his Spirit of Laws, says, that "slavery is ever preceded by sleep."[11] And

again, in his account of the rise and fall of the Roman Empire, page 97. "That it may be advanced as a general rule, that in a free State, whenever a perfect calm is visible, the spirit of liberty no longer subsists."[12] And Mr. *Dickinson*, in his Farmer's Letters, No. XI. lays it down as a maxim, that "A perpetual jealousy respecting liberty is absolutely requisite in all free States."

"Happy are the men, and happy the people, who grow wise by the misfortunes of others. Earnestly, my dear countrymen, do I beseech the author of all good gifts, that you may grow wise in this manner, and I beg leave to recommend to you in general, as the best method of obtaining this wisdom, diligently to study the histories of other countries. You will there find all the arts, that can possibly be practised by cunning rulers, or false patriots among yourselves, so fully delineated, that changing names, the account would serve for your own times."[13]

2.7.34 A *few* citizens of Philadelphia (too few, for the honour of human nature) who had the wisdom to think *consideration* ought to precede *approbation*, and the fortitude to avow that they would take time to judge for themselves on so momentous an occasion, were stigmatized as enemies to their country; as monsters, whose existence ought not to be suffered, and the destruction of them and their houses recommended, as meritorious.—The authors of the new plan, conscious that it would not stand the test of enlightened patriotism, tyrannically endeavoured to preclude all investigation.—If their views were laudable[,] if they were honest,—the contrary would have been their conduct, they would have invited the freest discussion. Whatever specious reasons may be assigned for secrecy during the framing of the plan, no good one can exist, for leading the people blindfolded into the implicit adoption of it. Such an attempt does not augur the public good—It carries on the face of it an intention to juggle the people out of their liberties.

2.7.35 The virtuous and spirited exertions of a few patriots, have at length roused the people from their fatal infatuation to a due sense of the importance of the measure before them. The glare and fascination of names is rapidly abating, and the subject begins to be canvassed on its own merits; and so serious and general has been the impression of the objections urged against the new plan, on the minds of the people, that its advocates, finding mere declamation and scurrility will no longer avail, are reluctantly driven to defend it on the ground of argument. Mr. *Wilson*, one of the deputies of this State in the late Convention, has found it necessary to come forward.[14] From so able a lawyer, and so profound a politician, what might not be expected, if this act of Convention be the heavenly dispensation which some represent it. Its divinity would certainly be illustrated by one of the principal instruments of the Revelation; for this gentleman has that transcendent merit!—But if, on the other hand, this able advocate has failed to vindicate it from the objections of its adversaries, must we not consider it as the production of *frail* and *interested* men.

2.7.36 Mr. *Wilson* has recourse to the most flimsey sophistry in his attempt to refute the charge that the new plan of general government will supersede and render powerless the state governments. His quibble upon the term *Corporation*, as sometimes equivalent to communities which possess sovereignty, is unworthy of him.[15] The same comparison in the case of the British parliament assuming to tax the colonies, is made in the Xth of the Farmer's Letters, and was not misunderstood in 1768 by any. He says that the existence of the proposed federal plan depends on the existence of the State governments, as the senators are to be appointed by the several legislatures, who are also to nominate the electors who chuse the President of the United States; and that hence all fears of the several States being melted down into one empire, are groundless and imaginary.[16]—But who is so dull as not to comprehend, that the *semblance* and *forms* of an ancient establishment, may remain, after the *reality* is gone.—*Augustus*, by the aid of a great army, assumed despotic power, and notwithstanding this, we find even under Tiberius, Caligula and Nero, princes who disgraced human nature by their excesses, the shadows of the ancient constitution held up to amuse the people. The senate sat as formerly; consuls, tribunes of the people, censors and other officers were annually chosen as before, and the forms of republican government continued. Yet all this was in *appearance* only.—Every *senatus consultum* was dictated by him or his ministers, and every Roman found himself constrained to submit in all things to the despot.

2.7.37 Mr. *Wilson* asks, "What controul can proceed from the federal government to shackle or destroy that *sacred palladium* of national freedom, the *liberty of the press*?"[17] What!—Cannot Congress, when possessed of the immense authority proposed to be devolved, restrain the printers, and put them under regulation.—Recollect that the omnipotence of the federal legislature over the State establishments is recognized by a special article, viz.—"that this Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the *supreme law* of the land; and the judges in every State shall be bound thereby, any thing in the *Constitutions* or laws of any State to the contrary notwithstanding."—After such a declaration, what security does the *Constitutions* of the several States afford for the *liberty of the press and other invaluable personal rights*, not provided for by the new plan?—Does not this sweeping clause subject every thing to the controul of Congress?

2.7.38 In the plan of Confederation of 1778,[18] now existing, it was thought proper by Article the 2d, to declare that "each State retains its sovereignty, freedom and independence[,] and every power, jurisdiction and right, which is not by this Confederation expressly delegated to the United States in Congress assembled." *Positive* grant was not *then* thought sufficiently descriptive and restraining upon Congress, and the omission of such a declaration *now*, when such great devolutions of power are proposed, manifests

the design of reducing the several States to shadows. But Mr. Wilson tells you, that every right and power not specially granted to Congress is considered as withheld.[19] How does this appear? Is this principle established by the proper authority? Has the Convention made such a stipulation? By no means. Quite the reverse; the *laws* of Congress are to be "the *supreme law* of the land, any thing in the *Constitutions* or laws of any State to the contrary notwithstanding;" and consequently, would be *paramount* to all *State* authorities. The lust of power is so universal, that a speculative unascertained rule of construction would be a *poor* security for the liberties of the people.

2.7.39 Such a body as the intended Congress, unless particularly inhibited and restrained, must grasp at omnipotence, and before long swallow up the Legislative, the Executive, and the Judicial powers of the several States.

2.7.40 In addition to the respectable authorities quoted in my first number, to shew that the right of *taxation* includes all the powers of government, I beg leave to adduce the Farmer's Letters, see particularly letter 9th, in which Mr. Dickinson has clearly proved, that if the British Parliament assumed the power of taxing the colonies, *internally*, as well as *externally*, and it should be submitted to, the several colony legislatures would soon become contemptible, and before long fall into disuse.—Nothing, says he, would be left for them to do, higher than to frame bye-laws for empounding of cattle or the yoking of hogs.

2.7.41 By the proposed plan, there are divers cases of judicial authority to be given to the courts of the United States, besides the two mentioned by Mr. *Wilson*.[20]—In maritime causes about property, jury trial has not been usual; but in suits in *equity*, with all due deference to Mr. *Wilson's* professional abilities, (which he calls to his aid) jury trial, as to facts, is in full exercise. Will this jurisperitus say that if the question in equity should be, did *John Doe* make a will, that the chancellor of England would decide upon it? He well knows that in this case, there being no mode of jury trial before the chancellor, the question would be referred to the court of king's bench for discussion [decision?] according to the common law, and when the judge in equity should receive the *verdict*, the fact so established, could never be re-examined or controverted. Maritime causes and those appertaining to a court of equity, are, however, but *two* of the many and extensive subjects of federal cognizance mentioned in the plan. This jurisdiction will embrace all suits arising under the laws of impost, excise and other revenue of the United States. In England if goods be seized, if a ship be prosecuted for non-compliance with, or breach of the laws of the customs, or those for regulating trade, in the court of exchequer, the claimant is secured of the transcendent privilege of Englishmen, *trial by a jury of his peers*. Why not in the United States of America? This jurisdiction also goes to all cases under the laws of the United States, that is to say, under all statutes and ordinances of Congress. How far this may extend, it is easy to forsee; for upon

the decay of the state powers of legislation, in consequence of the loss of the *purse strings*, it will be found necessary for the federal legislature to make laws upon every subject of legislation. Hence the state courts of justice, like the barony and hundred courts of England, will be eclipsed and gradually fall into disuse.

2.7.42 The jurisdiction of the federal court goes, likewise, to the laws to be created by treaties, made by the President and Senate, (a species of legislation) with other nations; "to all cases affecting foreign ministers and consuls; to controversies wherein the United States shall be a party; to controversies between citizens of different states," as when an inhabitant of *New-York* has a demand on an inhabitant of *New-Jersey*.—This last is a very invidious jurisdiction, implying an improper distrust of the impartiality and justice of the tribunals of the states. It will include all legal debates between foreigners in Britain, or elsewhere, and the people of this country.—A reason hath been assigned for it, viz. "That large tracts of land, in neighbouring states, are claimed under royal or other grants, disputed by the states where the lands lie, so that justice cannot be expected from the state tribunals."[21]—Suppose it were proper indeed to provide for such case, why include all cases, and for all time to come? Demands as to land for 21 years would have satisfied this. A London merchant shall come to America, and sue for his supposed debt, and the citizen of this country shall be deprived of jury trial, and subjected to an appeal (tho' nothing but the *fact* is disputed) to a court 500 or 1000 miles from home; when if this American has a claim upon an inhabitant of England, his adversary is secured of the privilege of jury trial.—This jurisdiction goes also to controversies between any state and its citizens; which, though probably not intended, may hereafter be set up as a ground to divest the states, severally, of the trial of criminals; inasmuch as every charge of felony or misdemeanour, is a controversy between the state and a citizen of the same: that is to say, the state is plaintiff and the party accused is defendant in the prosecution.[22] In all doubts about jurisprudence, as was observed before, the paramount courts of Congress will decide, and the judges of the state, being *sub graviore lege*, under the paramount law, must acquiesce.

2.7.43 Mr. *Wilson* says, that it would have been impracticable to have made a general rule for jury trial in the civil cases assigned to the federal judiciary, because of the want of uniformity in the mode of jury trial, as practised by the several states.[23] This objection proves too much, and therefore amounts to nothing. If it precludes the mode of common law in civil cases, it certainly does in criminal. Yet in these we are told "the oppression of government is effectually barred by declaring that in all criminal cases *trial by jury* shall be preserved." Astonishing, that provision could not be made for a jury in civil controversies, of 12 men, whose verdict should be unanimous, *to be taken from the vicinage;* a precaution which is omitted as to trial of crimes, which may be any where in the state within which they have been committed. So that an inhabitant of *Kentucky* may be tried for treason at *Richmond*.

The abolition of jury trial in civil cases, is the more considerable, as at length the courts of Congress will supersede the state courts, when such mode of trial will fall into disuse among the people of the United States. 2.7.44

The northern nations of the European continent, have all lost this invaluable privilege: *Sweden*, the last of them, by the artifices of the *aristocratic* senate, which depressed the king and reduced the house of commons to insignificance. But the nation a few years ago, preferring the absolute authority of a monarch to the *vexatious* domination of the *well-born* few, an end was suddenly put to their power.

"The policy of this right of juries, (says judge Blackstone) to decide upon *fact*, is founded on this: That if the power of judging were entirely trusted with the magistrates, or any select body of men, named by the executive authority, their decisions, in spite of their own natural integrity, would have a biass towards those of their own rank and dignity; for it is not to be expected, that the *few* should be attentive to the rights of the *many*. This therefore preserves in the hands of the people, that share which they ought to have in the administration of justice, and prevents the encroachments of the more powerful and wealthy citizens."[24]

The attempt of governor *Colden*, of New-York, before the revolution to re-examine the *facts* and re-consider the *damages*, in the case of *Forsey* against *Cunningham*, produced about the year 1764, a flame of patriotic and successful opposition, that will not be easily forgotten.[25] 2.7.45

To manage the various and extensive judicial authority, proposed to be vested in Congress, there will be one or more inferior courts immediately requisite in each state; and laws and regulations must be forthwith provided to direct the judges—here is a wide door for inconvenience to enter. Contracts made under the acts of the states respectively, will come before courts acting under new laws and new modes of proceeding, not thought of when they were entered into.—An inhabitant of Pennsylvania residing at Pittsburgh, finds the goods of his debtor, who resides in Virginia, within the reach of his attachment; but no writ can be had to authorise the marshal, sheriff, or other officer of Congress, to seize the property, about to be removed, nearer than 200 miles: suppose that at Carlisle, for instance, such a writ may be had, mean while the object escapes. Or if an inferior court, whose judges have ample salaries, be established in every county, would not the expence be enormous? Every reader can extend in his imagination, the instances of difficulty which would proceed from this needless interference with the judicial rights of the separate states, and which as much as any other circumstance in the new plan, implies that the dissolution of their forms of government is designed. 2.7.46

Mr. *Wilson* skips very lightly over the danger apprehended from the standing army allowed by the new plan.[26] This grand machine of power and oppression, may be made a fatal instrument to overturn the public liberties, especially as the funds to support the troops may be granted for *two* years, whereas in Britain, the grants ever since the revolution in 1688, have been 2.7.47

from year to year. A standing army with regular provision of pay and contingencies, would afford a strong temptation to some ambitious man to step up into the throne, and to seize absolute power. The keeping on foot a hired military force *in time of peace*, ought not to be gone into, unless *two thirds* of the members of the federal legislature agree to the necessity of the measure, and adjust the numbers employed. Surely Mr. *Wilson* is not serious when he adduces the instance of the troops now stationed on the Ohio, as a proof of the propriety of a standing army.—They are a mere occasional armament for the purpose of restraining divers hostile tribes of savages. It is contended that under the present confederation, Congress possess the power of raising armies at pleasure; but the opportunity which the states severally have of withholding the supplies necessary to keep these armies on foot, is a sufficient check on the *present* Congress.

2.7.48 Mr. *Wilson* asserts, that never was charge made with less reason, than that which predicts the institution of a *baneful aristocracy* in the federal Senate.[27]—In my first number, I stated that this body would be a very unequal representation of the several states, that the members being appointed for the long term of six years, and there being no exclusion by rotation, they might be continued for life, which would follow of course from their extensive means of influence, and that possessing a considerable share in the *executive* as well as *legislative*, it would become a *permanent aristocracy*, and swallow up the other orders in the government.[28]

2.7.49 That these fears are not imaginary, a knowledge of the history of other nations, where the powers of government have been injudiciously placed, will fully demonstrate. Mr. *Wilson* says, "the senate branches into two characters; the one legislative and the other executive. In its legislative character it can effect no purpose, without the co-operation of the house of representatives, and in its executive character it can accomplish no object without the concurrence of the president. Thus fettered, I do not know any act which the senate can of itself perform, and such dependence necessarily precludes every idea of influence and superiority." This I confess is very specious, but experience demonstrates, that checks in government, unless accompanied with *adequate* power and *independently* placed, prove *merely nominal*, and will be *inoperative*. Is it probable, that the president of the United States, limited as he is in power, and dependent on the will of the senate, in appointments to office, will either have the *firmness* or *inclination* to exercise his prerogative of a conditional controul upon the proceedings of that body, however injurious they may be to the public welfare: it will be his interest to coincide with the views of the senate, and thus become the head of the aristocratic junto. The king of England is a constitutent part in the legislature, but although an hereditary monarch, in possession of the whole executive power, including the unrestrained appointment to offices, and an immense revenue, enjoys but in *name* the prerogative of a negative upon the parliament. Even the king of England, circumstanced as he is, has not dared

to exercise it for near a century past. The check of the house of representatives upon the senate will likewise be rendered nugatory for want of due weight in the democratic branch, and from their constitution *they* may become so *independent* of the *people* as to be indifferent of its interests: nay as Congress would have the controul over the mode and place of their election, by ordering the representatives of a *whole* state to be elected at *one* place, and that too the most *inconvenient*, the ruling power may govern the *choice*, and thus the house of representatives may be composed of the *creatures* of the senate. Still the *semblance* of checks, may remain but without *operation*.

This mixture of the legislative and executive moreover highly tends to 2.7.50
corruption. The chief improvement in government, in modern times, has been the compleat separation of the great distinctions of power; placing the *legislative* in different hands from those which hold the *executive;* and again severing the *judicial* part from the ordinary *administrative*. "When the legislative and executive powers (says Montesquieu) are united in the same person, or in the same body of magistrates, there can be no liberty."[29]

Mr. *Wilson* confesses himself, not satisfied with the organization of the 2.7.51
federal senate, and apologizes for it, by alledging a sort of compromise. It is well known, that some members of convention, apprized of the mischiefs of such a compound of authority, proposed to assign the supreme executive powers to the president and a small council, made personally responsible for every appointment to office, made personally responsible for every appointment to office, or other act, by having their opinions recorded; and that without the concurrence of the majority of the quorum of this council, the president should not be capable of taking any step. Such a check upon the chief magistrate would admirably secure the power of pardoning, now proposed to be exercised by the president alone, from abuse. For as it is placed he may shelter the traitors whom he himself or his coadjutors in the senate, have excited to plot against the liberties of the nation.

The delegation of the power of taxation to Congress, as far as duties on 2.7.52
imported commodities, has not been objected to. But to extend this to excises, and every species of internal taxation, would necessarily require so many ordinances of Congress, affecting the body of the people, as would perpetually interfere with the State laws and personal concerns of the people. This alone would directly tend to annihilate the particular governments; for the people fatigued with the operations of two masters would be apt to rid themselves of the weaker. But we are cautioned against being alarmed with imaginary evils, for Mr. *Wilson* has predicted that the great revenue of the United States, will be raised by impost.[30] Is there any ground for this? Will the impost supply the sums necessary to pay the interest and principal of the foreign loan, to defray the great additional expence of the new constitution; for the policy of the new government will lead it to institute numerous and lucrative civil offices, to extend its influence and pro-

vide for the swarms of expectants; (the people having in fact no controul upon its disbursements) and to afford pay and support for the proposed standing army, that darling and long wished for object of the *well-born* of America; and which, if we may judge from the principles of the intended government, will be no trifling establishment, for cantonments of troops in every district of America, will be necessary to compel the submission of the people to the arbitrary dictates of the ruling powers? I say will the impost be adequate? By no means.—To answer these there must be excises and other indirect duties imposed, and as land taxes will operate too equally to be agreeable to the wealthy aristocracy in the senate who will be possessed of the government, *poll taxes* will be substituted as provided for in the new plan; for the doctrine then will be, *that slaves ought to pay for wearing their heads.*[31]

2.7.53 As the taxes necessary for these purposes, will drain your pockets of every penny, what is to become of that virtuous and meritorious class of citizens the public creditors. However well disposed the people of the United States may be to do them justice, it would not be in their power; and, *after waiting year after year*, without prospect of the payment of the interest or principal of the debt, they will be constrained to sacrifice their certificates in the purchase of waste lands in the far distant wilds of the western territory.

2.7.54 From the foregoing illustration of the powers proposed to be devolved to Congress, it is evident, that the general government would necessarily annihilate the particular governments, and that the security of the personal rights of the people by the state constitutions is superseded and destroyed; hence results the necessity of such security being provided for by a bill of rights to be inserted in the new plan of federal government. What excuse can we then make for the omission of this grand palladium, this barrier between *liberty* and *oppression*. For universal experience demonstrates the necessity of the most express declarations and restrictions, to protect the rights and liberties of mankind, from the silent, powerful and ever active conspiracy of those who govern.

2.7.55 The new plan, it is true, does propose to secure the people of the benefit of personal liberty by the *habeas corpus;* and trial by jury for all crimes, except in case of impeachment: but there is no declaration, that all men have a natural and unalienable right to worship Almighty God, according to the dictates of their own consciences and understanding; and that no man ought, or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any ministry, contrary to, or against his own free will and consent; and that no authority can or ought to be vested in, or assumed by any power whatever, that shall in any case interfere with, or in any manner controul, the right of conscience in the free exercise of religious worship: that the trial by jury in civil causes as well as criminal, and the modes prescribed by the common law for safety of life in

criminal prosecutions shall be held sacred; that the requiring of excessive bail, imposing of excessive fines and cruel and unusual punishments be forbidden; that monoplies in trade or arts, other than to authors of books or inventors of useful arts, for a reasonable time, ought not to be suffered; that the right of the people to assemble peaceably for the purpose of consulting about public matters, and petitioning or remonstrating to the federal legislature ought not to be prevented; that *the liberty of the press be held sacred;* that the people have a right to hold themselves, their houses, papers and possessions free from search or seizure; and that therefore warrants without oaths or affirmations first made, affording a sufficient foundation for them, and whereby any officer or messenger may be commanded or required to search suspected places, or to seize any person or his property, not particularly described, are contrary to that right and ought not to be granted; and that standing armies in time of peace are dangerous to liberty, and ought not to be permitted but when absolutely necessary; all which is omitted to be done in the proposed government.

2.7.56 But Mr. *Wilson* says, the new plan does not arrogate perfection, for it provides a mode of alteration and correction, if found necessary.[32] This is one among the numerous deceptions attempted on this occasion. True, there is a mode prescribed for this purpose. But it is barely possible that amendments may be made. The fascination of power must first cease, the nature of mankind undergo a revolution, that is not to be expected on this side of eternity. For to effect this (Art. 6.) it is provided, that if *two thirds* of both houses of the federal legislature shall propose them; or when two thirds of the several states by their legislatures, shall apply for them, the federal assembly shall call a convention for proposing amendments, which when ratified by three fourths of the state legislatures, or conventions, as Congress shall see best, shall controul and alter the proposed confederation. Does history abound with examples of a voluntary relinquishment of power, however injurious to the community? No; it would require a general and successful rising of the people to effect anything of this nature.—This provision therefore is mere sound.

2.7.57 The opposition to the new plan (says Mr. Wilson) proceeds from interested men, *viz.* the officers of the state governments.[33] He had before denied that the proposed transfer of powers to Congress would annihilate the state governments. But he here lays aside the masque, and avows the fact. For, the truth of the charge against *them* must entirely rest on such consequence of the new plan. For if the state establishments are to remain unimpaired, why should officers peculiarly connected with them, be interested to oppose the adoption of the new plan? Except the collector of the impost, judge of the admiralty, and the collectors of excise (none of whom have been reckoned of the opposition) they would otherwise have nothing to apprehend.—But the charge is unworthy and may with more propriety be retorted on the expectants of office and emolument under the intended government.

2.7.58 The opposition is not so partial and interested as Mr. *Wilson* asserts. It consists of a respectable yeomanry throughout the union, of characters far removed above the reach of his unsupported assertions. It comprises many worthy members of the late convention, and a majority of the present Congress, for a motion made in that honorable body, for their *approbation* and *recommendation* of the new plan, was after two days animated discussion, prudently withdrawn by its advocates, and a simple *transmission** of the plan to the several states could only be obtained; yet this has been palmed upon the people as the approbation of Congress; and to strengthen the deception, the bells of the city of Philadelphia were rung for a whole day.

2.7.59 Are Mr. *W——n*, and many of his coadjutors in the late C——n, the disinterested patriots they would have us believe? Is their conduct any recommendation of their plan of government? View them the foremost and loudest on the floor of Congress, in our Assembly, at town meetings, in sounding its eulogiums:—View them preventing investigation and discussion, and in that most despotic manner endeavouring to compel its adoption by the people, with such precipitancy as to preclude the possibility of a due consideration, and then say whether the motives of these men can be pure.

My fellow citizens, such false detestable *patriots* in every nation, have led their blind confiding country, shouting their applauses, into the jaws of *despotism* and *ruin*. May the wisdom and virtue of the people of America, save them from the usual fate of nations.

Centinel.

III[34]

To the People of Pennsylvania.

John iii. ver. 20th—*"For every one that doeth evil, hateth the light, neither cometh to the light, lest his deeds should be reproved."—But "there is nothing covered that shall not be revealed; neither hid that shall not be known. Therefore whatsoever ye have spoken in darkness, shall be heard in*

*Upon the last motion being made, those who had strenuously and successfully opposed Congress giving any countenance of approbation or recommendation to this system of oppression, said,—"We have no objection to transmit the new plan of government to the several states, that they may have an opportunity of judging for themselves on so momentous a subject." Whereupon it was unanimously agreed to, in the following words, *viz.* "Congress having received the report of the Convention lately assembled in Philadelphia, *Resolved unanimously*, That the said report, with the resolutions and letter accompanying the same, be *transmitted* to the several legislatures, in order to be submitted to a convention of delegates, chosen in each state by the people thereof, in conformity to the resolves of the Convention, made and provided in that case."

the light: and that which ye have spoken in the ear in closets, shall be proclaimed on the house tops.'' St. Luke, chap. xii. 2d and 3d verses.

Friends, Countrymen, and Fellow-Citizens!

The formation of a good government, is the greatest effort of human wisdom, actuated by disinterested patriotism; but such is the cursed nature of ambition, so prevalent in the minds of men, that it would sacrifice every thing to its selfish gratification; hence the fairest opportunities of advancing the happiness of humanity, are so far from being properly improved, that they are too often converted by the votaries of power and domination, into the means of obtaining their nefarious ends. It will be the misfortune of America of adding to the examples of this kind, if the proposed plan of government should be adopted; but I trust, short as the time allowed you for consideration is, you will be so fully convinced of the truth of this, as to escape the impending danger: it is only necessary to strip the monster of its assumed garb, and to exhibit it in its native colours, to excite the universal abhorrence and rejection of every virtuous and patriotic mind. 2.7.60

For the sake of my dear country, for the honor of human nature, I hope and am persuaded, that the good sense of the people will enable them to rise superior to the most formidable conspiracy against the liberties of a free and enlightened nation, that the world has ever witnessed. How glorious would be the triumph! How it would immortalize the present generation in the annals of freedom! 2.7.61

The establishment of a government, is a subject of such momentous and lasting concern, that it should not be gone into without the clearest conviction of its propriety; which can only be the result of the fullest discussion, the most thorough investigation and dispassionate consideration of its nature, principles and construction. You are now called upon to make this decision, which involves in it, not only your fate, but that of your posterity for ages to come. Your determination will either ensure the possession of those blessings, which render life desireable, or entail those evils which make existence a curse: that such are the consequences of a wise or improper organization of government, the history of mankind abundantly testifies. If you viewed the magnitude of the object in its true light, you would join with me in sentiment, that the new government ought not to be implicitly admitted. Consider then duly before you leap, for after the Rubicon is once passed, there will be no retreat. 2.7.62

If you were even well assured that the utmost purity of intention predominated in the production of the proposed government, such is the imperfection of human reason and knowledge, that it would not be wise in you to adopt it with precipitation *in toto*, for all former experience must teach you the propriety of a revision on such occasions, to correct the errors, and supply the deficiences, that may appear necessary. In every government whose object is the public welfare, the laws are subjected to repeated revisions, in some by different orders in the governments, in others by an 2.7.63

appeal to the judgements of the people and deliberative forms of procedure. A knowledge of this, as well as of other states, will show that in every instance where a law has been passed without the usual precautions, it has been productive of great inconvenience and evils, and frequently has not answered the end in view, a supplement becoming necessary to supply its deficiences.

2.7.64 What then are we to think of the motives and designs of those men who are urging the implicit and immediate adoption of the proposed government? are they fearful, that if you exercise your good sense and discernment, you will discover the masqued aristocracy, that they are attempting to smuggle upon you, under the suspicious garb of republicanism?—When we find that the principal agents in this business, are the very men who fabricated the form of government, it certainly ought to be conclusive evidence of their insidious design to deprive us of our liberties—The circumstances attending this matter, are such as should in a peculiar manner excite your suspicion; it might not be useless to take a review of some of them.

2.7.65 In many of the states, particularly in this and the northern states, there are aristocratic junto's of the *well-born few*, who had been zealously endeavoring since the establishment of their constitutions, to humble that offensive *upstart, equal liberty;* but all their efforts were unavailing, the *ill-bred churl* obstinately kept his assumed station.

2.7.66 However, that which could not be accomplished in the several states, is now attempting through the medium of the future Congress.—Experience having shewn great defects in the present confederation, particularly in the regulation of commerce and maritime affairs; it became the universal wish of America to grant further powers, so as to make the federal government adequate to the ends of its institution. The anxiety on this head was greatly increased, from the impoverishment and distress occasioned by the excessive importations of foreign merchandise and luxuries, and consequent drain of specie, since the peace: thus the people were in the disposition of a drowning man, eager to catch at any thing that promised relief, however delusory. Such an opportunity for the acquisition of *undue* power, has never been viewed with indifference by the ambitious and designing in any age or nation, and it has accordingly been too successfully improved by such men among us. The deputies from this state (with the exception of two) and most of those from the other states in the union, were unfortunately of this complexion, and many of them of such superior endowments, that in an *exparte* discussion of the subject, by specious glosses they have gained the concurrence of some well disposed men, in whom their country have great confidence, which has given a great sanction to their scheme of power.

2.7.67 A comparison of the authority under which the convention acted, and their form of government, will shew that they have despised their delegated power, and assumed sovereignty; that they have entirely annihilated the old confederation, and the particular government of the several states, and

instead thereof have established one general government that is to pervade the union; constituted on the most *unequal* principles, destitute of accountability to its constituents, and as despotic in its nature, as the Venetian aristocracy; a government that will give full scope to the magnificent designs of the *well-born;* a government where tyranny may glut its vengeance on the *low-born,* unchecked by *an odious bill of rights:* as has been fully illustrated in my two preceding numbers; and yet as a blind upon the understandings of the people, they have continued the forms of the particular governments, and termed the whole a confederation of the United States, pursuant to the sentiments of that profound, but corrupt politician Machiavel, who advises any one who would change the constitution of a state, to keep as much as possible to the old forms; for then the people seeing the same officers, the same formalities, courts of justice, and other outward appearances, are insensible of the alteration, and believe themselves in possession of their old government.[35] Thus Caesar, when he seized the Roman liberties, caused himself to be chosen dictator (which was an ancient office) continued the senate, the consuls, the tribunes, the censors, and all other offices and forms of the commonwealth; and yet changed Rome from the most free to the most tyrannical government in the world.

2.7.68 The convention, after vesting all the great and efficient powers of sovereignty in the general government, insidiously declare by section 4th of article 4th, "that the United States shall guarantee to every state in this union, a republican *form* of government;" but of what avail will be the *form* without the *reality* of freedom?

2.7.69 The late convention in the majesty of its assumed omnipotence, have not even condescended to submit the plan of the new government to the consideration of the people, the true source of authority; but have called upon them by their several conventions, 'to assent to and ratify'* in toto, what they have been pleased to decree; just as the grand monarque of France requires the parliament of Paris to register his edicts without revision or alteration, which is necessary previous to their execution.

2.7.70 The authors and advocates of the new plan, conscious that its establishment can only be obtained from the ignorance of the people of its true nature, and their unbounded confidence in some of the men concurring; have hurried on its adoption with a precipitation that betrays their design: before many had seen the new plan, and before any had time to examine it, they, by their ready minions, attended by some well disposed but mistaken persons, obtained the subscriptions of the people to papers expressing their entire approbation of [it], and their wish to have it established; thus precluding them from any consideration; but lest the people should discover the juggle, the elections of the state conventions, are urged on at very early days; the proposition of electing the convention for this state in nine days

*See resolution of Convention accompanying the instrument of the proposed government.[36]

after the date of the resolution for all the counties east of Bedford, and supported by three or four of the deputies of the convention, and who were also members of the then assembly, is one of the most extravagant instances of this kind; and even this was only prevented by the secession of nineteen virtuous and enlightened members.*[37] In order to put the matter beyond all recal, they have proceeded a step further, they have made the deputies nominated for the state convention of this city and elsewhere, pledge their sacred honor, previous to their election, that they would implicitly adopt the proposed government, in toto; thus short as the period is before the final fiat is to be given, consideration is rendered nugatory, and conviction of its dangers or impropriety unavailable. A good cause does not stand in need of such means; it scorns all indirect advantages and borrowed helps, and trusts alone to its own native merit and intrinsic strength: the lion is never known to make use of cunning, nor can a good cause suffer by a free and thorough examination—It is knavery that seeks disguise. Actors do not care that any one should look into the tiring room, nor jugglers or sharpers into their hands or boxes.

Every exertion has been made to suppress discussion by shackling the press; but as this could not be effected in *this* state, the people are warned not to listen to the adversaries of the proposed plan, lest they should impose upon them, and thereby prevent the adoption of this blessed government. What figure would a lawyer make in a court of justice, if he should desire the judges not to hear the counsel of the other side, lest they should perplex the cause and mislead the court? Would not every bystander take it for granted, that he was conscious of the weakness of his client's cause, and that it could no otherwise be defended, than by not being understood?

2.7.71 All who are friends to liberty are friends to reason, the champion of liberty, and none are foes to liberty but those who have truth and reason for

*The message of the President and Council, sent into the present General Assembly, on the 27th of October last, discloses another imposition. The board sent to the House the official transmission of the proposed constitution of the United States, inclosed in a letter from the President of Congress, which proves that the paper produced to the last house on the day before the final rising of the same, was a surreptitious copy of the vote of Congress, obtained for the purpose of deluding the legislature into the extravagance of directing an election of Convention within *nine* days.

The provision made by the Convention of Pennsylvania, which sat in 1776 for amending the constitution, is guarded with admirable wisdom and caution. A council of Censors is to be holden every seven years, which shall have power (two thirds of the whole number elected agreeing) to propose amendments of the same government, and to call a Convention to adopt and establish these propositions; but the alterations must be "promulgated *at least* six months before the day appointed for the *election* of such Convention, for the *previous consideration* of the people, that they may have an opportunity of instructing their delegates on the subject." The present measures explain the conduct of a certain party of the Censors who sat in 1784, (much fewer than two thirds of the whole) that proposed to abolish the 47th article of the constitution, whereby the manner of amending the same was regulated.

their foes. He who has dark purposes to serve, must use dark means; light would discover him, and reason expose him: he must endeavour to shut out both, and make them look frightful by giving them ill names.

Liberty only flourishes where reason and knowledge are encouraged; and wherever the latter are stifled, the former is extinguished. In Turkey printing is forbid, enquiry is dangerous, and free speaking is capital; because they are all inconsistent with the nature of the government. Hence it is, that the Turks are all stupidly ignorant, and are all slaves. 2.7.72

I shall now proceed in the consideration of the construction of the proposed plan of government.—By section 4th of article 1st, of the proposed government, it is declared, "that the times, places, and manner of holding elections for senators and representatives shall be prescribed in each State by the legislature thereof; *but the Congress may at any time by law make or alter such regulations, except as to the place of chusing senators.*" Will not this section put it in the power of the future Congress to abolish the suffrage by ballot, so indispensible in a free government.—Montesquieu, in his Spirit of Laws, vol. 1, page 12, says "that in a democracy there can be no exercise of sovereignty but by the suffrages of the people, which are their will: now the sovereign's will is the sovereign himself. The laws, therefore, which establish the right of suffrage, are fundamental to this government. In fact, it is as important to regulate in a republic, in what manner, by whom, and concerning what, suffrages are to be given, as it is in a monarchy to know who is the prince, and after what manner he ought to govern."[38] This valuable privilege of voting by ballot, ought not to rest on the discretion of the government, but be irrevocably established in the Constitution. 2.7.73

Will not the above quoted section, also authorise the future Congress to lengthen the term for which the senators and representatives are to be elected, from 6 and 2 years respectively, to any period, even for life? As the parliament of England voted themselves from triennial to septennial; and as the long parliament under Charles the 1st became perpetual? 2.7.74

Section 8th, of article 1st, vests Congress with power "to provide for calling forth the militia to execute the laws of the union, suppress insurrections and repell invasions; to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress."—This section will subject the citizens of these States to the most arbitrary military discipline, even death may be inflicted on the disobedient; in the character of militia, you may be dragged from your families and homes to any part of the continent, and for any length of time, at the discretion of the future Congress: and as militia, you may be made the unwilling instruments of oppression, under the direction of government; there is no exemption upon account of conscientious scruples of bearing arms; no equivalent to be re- 2.7.75

ceived in lieu of personal services. The militia of Pennsylvania may be marched to Georgia or New-Hampshire, however incompatible with their interests or consciences;—in short, they may be made as mere machines as Prussian soldiers.

2.7.76 Section the 9th begins thus—"The migration or importation of such persons, as any of the States, now existing, shall think proper to admit, shall not be prohibited by Congress prior to the year 1808, but a duty or tax may be imposed on such importation, not exceeding ten dollars for each person." And by the 5th article this restraint is not to be removed by any future Convention. We are told that the objects of this article are slaves, and that it is inserted to secure to the southern States the right of introducing negroes for twenty-one years to come, against the declared sense of the other States to put an end to an odious traffic in the human species; which is especially scandalous and inconsistent in a people, who have asserted their own liberty by the sword, and which dangerously enfeebles the districts, wherein the labourers are bondmen. The words are dark and ambiguous; such as no plain man of common sense would have used, [and] are evidently chosen to conceal from Europe, that in this enlightened country, the practice of slavery has its advocates among men in the highest stations. When it is recollected that no poll tax can be imposed on *five* negroes above what *three* whites shall be charged; when it is considered, that the impost on the consumption of the Carolina field negroes, must be trifling, and the excise, nothing, it is plain that the proportion of contributions, which can be expected from the southern states under the new constitution, will be very unequal; and yet they are to be allowed to enfeeble themselves by the further importation of negroes till the year 1808. Has not the concurrence of the five southern states (in the convention) to the new system, been purchased too dearly by the rest, who have undertaken to make good their deficiencies of revenue, occasioned by their wilful incapacity, without an equivalent?

The general acquiescence of one description of citizens in the proposed government, surprises me much; if so, many of the Quakers have become indifferent to the sacred rights of conscience, so amply secured by the constitution of this commonwealth;[39] if they are satisfied, to rest this inestimable privilege on the discretion of the future government; yet, in a political light, they are not acting wisely; in the state of Pennsylvania, they form so considerable a portion of the community, as must ensure them great weight in the government; but in the scale of general empire, they will be lost in the balance.

2.7.77 I intended in this number to have shewn from the nature of things, from the opinions of the greatest writers, and from the peculiar circumstances of the United States, the impracticability of establishing and maintaining one government on the principles of freedom in so extensive a territory; to have shewn, if practicable, the inadequacy of such government, to provide for its

many and various concerns; and also to have shewn, that a confederation of small republics, possessing all the powers of internal government, and united in the management of their general and foreign concerns, is the only system of government by which so extensive a country can be governed consistent with freedom: But a writer under the signature of Brutus, in the New-York paper, which has been republished by Messrs. Dunlap and Claypoole, has done this in so masterly a manner, that it would be superfluous in me to add any thing on this subject.[40]

My fellow citizens, as a lover of my country, as the friend to mankind, 2.7.78
whilst it is yet safe to write, and whilst it is yet in your power to avoid it, I warn you of the impending danger. To this remote quarter of the world, has liberty fled.—Other countries, now subject to slavery, were once as free as we yet are; therefore, for your own sakes, for the sake of your posterity, as well as for that of the oppressed of all nations, cherish this remaining asylum of liberty.

Centinel.

Philad., *Novem.* 5th, 1787.

IV[41]

To the People of Pennsylvania.

Friends, Countrymen and fellow Citizens,

That the present confederation is inadequate to the objects of the union, 2.7.79
seems to be universally allowed. The only question is, what additional powers are wanting to give due energy to the federal government? We should, however, be careful in forming our opinion on this subject, not to impute the temporary and extraordinary difficulties that [have] hitherto impeded the execution of the confederation, to defects in the system itself. Taxation is in every government, a very delicate and difficult subject; hence it has been the policy of all wise statesmen, as far as circumstances permitted, to lead the people by small beginnings and almost imperceptible degrees, into the habits of taxation; where the contrary conduct has been pursued, it has ever failed of full success, not unfrequently proving the ruin of the projectors. The imposing of a burdensome tax at once on a people, without the usual gradations, is the severest test that any government can be put to, despotism itself has often proved unequal to the attempt. Under this conviction, let us take a review of our situation before and since the revolution. From the first settlement of the country until the commencement of the late war, the taxes were so light and trivial as to be scarcely felt by the people; when we engaged in the expensive contest with Great Britain, the Congress sensible of the difficulty of levying the monies necessary to its support, by *direct* taxation, had recourse to an anticipation of the public resources, by emitting

bills of credit, and thus postponed the necessity of taxation for several years; this means was pursued to a most ruinous length; but about the year 80 or 81, it was wholly exhausted, the bills of credit had suffered such a depreciation from the excessive quantities in circulations, that they ceased to be useful as a medium. The country at this period, was very much impoverished and exhausted; commerce had been suspended for near six years; the husbandman, for want of a market, limited his crops to his own subsistence; the frequent calls of the militia and long continuance in actual service, the devastations of the enemy, the subsistence of our own armies, the evils of the depreciation of the paper money, which fell chiefly upon the patriotic and virtuous part of the community, and all concurred to produce great distress throughout America. In this situation of affairs, we still had the same powerful enemy to contend with, who had even more numerous and better appointed armies in the field than at any former time. Our allies were applied to in this exigence, but the pecuniary assistance that we could procure from them, was soon exhausted; the only resource now remaining, was to obtain by direct taxation, the monies necessary for our defence; the history of mankind does not furnish a similar instance of an attempt to levy such enormous taxes at once, of a people so wholly unprepared and uninured to them—the lamp of sacred liberty must indeed have burned with unsullied lustre, every sordid principle of the mind must have been then extinct, when the people not only submitted to the grievous impositions, but cheerfully exerted themselves to comply with the calls of their country; their abilities however, were not equal to furnish the necessary sums—indeed the requisition of the year 1782, amounted to the whole income of their farms and other property, including the means of their subsistence; perhaps the strained exertions of *two* years, would not have sufficed to the discharge of this requisition; how then can we impute the difficulties of the people to a due compliance with the requisitions of Congress to a defect in the confederation, for any government, however energetic, in similar circumstances, would have experienced the same fate. If we review the proceedings of the states, we shall find that they gave every sanction and authority to the requisitions of Congress, that their laws could confer, that they attempted to collect the sums called for in the same manner as is proposed to be done in future by the general government, instead of the state legislatures.

2.7.80 It is a maxim that a government, ought to be cautious not to govern over much, for when the cord of power is drawn too tight, it generally proves its destruction[;] the impracticability of complying with the requisitions of Congress has lessened the sense of obligation and duty in the people, and thus weakened the ties of the union; the opinion of power in a free government is much more efficatious than the exercise of it; it requires the maturity of time and repeated practice to give due energy and certainty to the operations of government, especially to such as affect the purses of the people.

The thirteen Swiss Cantons confederated by more general and weaker ties than these United States are by the present articles of confederation, have not experienced the necessity of strengthening their union by vesting their general diet with further or greater powers; this national body has only the management of their foreign concerns and in case of a war can only call by requisition on the several Cantons for the necessary supplies, who are sovereign and independent in every internal and local exercise of government—and yet this rope of sand, as our confederation has been termed, which is so similar to that, has held together for ages without any apparent charm. 2.7.81

I am persuaded that a due consideration, will evince, that the present inefficacy of the requisitions of Congress, is not owing to a defect in the confederation, but the peculiar circumstances of the times. 2.7.82

The wheels of the general government having been thus clogged and the arrearages of taxes still accumulating, it may be asked what prospect is there of the government resuming its proper tone, unless more compulsory powers are granted? To this it may be answered, that the produce of imposts on commerce which all agree to vest in Congress, together with the immense tracts of land at their disposal, will rapidly lessen and eventually discharge the present incumbrances; when this takes place, the mode by requisition will be found perfectly adequate to the extraordinary exigencies of the union. Congress have lately sold land to the amount of eight millions of dollars, which is a considerable portion of the whole debt.

It is to be lamented that the interested and designing have availed themselves so successfully of the present crisis, and under the specious pretence of having discovered a panacea for all the ills of the people, they are about establishing a system of government, that will prove more destructive to them, than the wooden horse filled with soldiers did in ancient times to the city of Troy; this horse was introduced by their hostile enemy the Grecians, by a prostitution of the sacred rites of their religion; in like manner, my fellow citizens[,] are aspiring despots among yourselves prostituting the name of a Washington to cloak their designs upon your liberties. 2.7.83

I would ask how is the proposed government to shower down those treasures upon every class of citizens as is so industriously inculcated and so fondly believed? Is it by the addition of numerous and expensive establishments? Is it by doubling our judiciaries, instituting federal courts in every county of every state? Is it by a superb presidental court? Is it by a large standing army? In short is it by putting it in the power of the future government to levy money at pleasure, and placing this government so independent of the people as to enable the administration to gratify every corrupt passion of the mind, to riot on your spoils, without check or controul? 2.7.84

A transfer to Congress of the power of imposing imposts on commerce and the unlimited regulation of trade, I believe is all that is wanting to render 2.7.85

America as prosperous as it is in the power of any form of government to render her; this properly understood would meet the views of all the honest and well meaning.

2.7.86 What gave birth to the late Continental Convention? Was it not the situation of our commerce, which lay at the mercy of every foreign power, who from motives of interest or enmity could restrict and controul it, without risquing a retaliation on the part of America, as Congress was impotent on this subject? Such indeed was the case with respect to Britain, whose hostile regulations gave such a stab to our navigation as to threaten its annihilation, it became the interest of even the American merchant to give a preference to foreign bottoms; hence the distress of our seamen, shipwrights, and every mechanic art dependent on navigation.

2.7.87 By these regulations too we were limitted in markets for our produce, our vessels were excluded from their West India Islands, many of our staple commodities were denied entrance in Britain; hence the husbandmen were distressed by the demand for their crops being lessened and their prices reduced. This is the source to which may be traced every evil we experience, that can be relieved by a more energetic government. Recollect the language of complaint for years past, compare the recommendations of Congress founded on such complaints, pointing out the remedy, examine the reasons assigned by the different states for appointing delegates to the late Convention, view the powers vested in that body; they all harmonize in one sentiment, that the due regulation of trade and navigation was the anxious wish of every class of citizens, was the great object of calling the Convention.

2.7.88 This object being provided for, by the proposed Constitution, the people overlook and are not sensible of the needless sacrifice they are making for it.—Of what avail will be a prosperous state of commerce, when the produce of it will be at the absolute disposal of an arbitrary and unchecked government, who may levy at pleasure the most oppressive taxes; who may destroy every principle of freedom; who may even destroy the privilege of complaining.

2.7.89 If you are in doubt about the nature and principles of the proposed government, view the conduct of its authors and patrons[;] that affords the best explanation, the most striking comment.

The evil genius of darkness presided at its birth, it came forth under the veil of mystery, its true features being carefully concealed, and every deceptive art has been and is practising to have this spurious brat received as the genuine offspring of heaven-born liberty. So fearful are its patrons that you should discern the imposition, that they have hurried on its adoption, with the greatest precipitation; they have endeavored also to preclude all investigation, they have endeavored to intimidate all opposition; by such means as these, have they surreptitiously procured a Convention in this state, favorable to their views; and here again investigation and discussion

are abridged, the final question is moved before the subject has been under consideration; an appeal to the people is precluded even in the last resort, lest their eyes should be opened; the Convention have denied the minority the privilege of entering the reasons of their dissent on its journals[42]—Thus despotism is already triumphant, and the genius of liberty is on the eve of her exit, is about bidding an eternal adieu to this once happy people.

2.7.90 After so recent a triumph over British despots, after such torrents of blood and treasure have been spent, after involving ourselves in the distresses of an arduous war, and incurring such a debt, for the express purpose of asserting the rights of humanity, it is truly astonishing that a set of men among ourselves, should have the effrontery to attempt the destruction of our liberties. But in this enlightened age to hope to dupe the people by the arts they are practising, is still more extraordinary.

2.7.91 How do the advocates of the proposed government, combat the objections urged against it? Not even by an attempt to disprove them, for that would the more fully confirm their truth, but by a species of reasoning that is very congenial to that contempt of the understandings of the people, that they so eminently possess, and which policy cannot even prevent frequent ebullitions of; they seem to think that the oratory and fascination of great names and mere sound will suffice to ensure success; that the people may be diverted from a consideration of the merits of the plan, by bold assertions and mere declamation. Some of their writers for instance, paint the distresses of every class of citizens with all the glowing language of eloquence, as if this was a demonstration of the excellence, or even the safety of the new plan,[43] which, notwithstanding the reality of this distress, may be a system of tyranny and oppression; other writers tell you of the great men who composed the late convention, and give you a pompous display of their virtues,[44] instead of a justification of the plan of government; and others again urge the tyrant's plea, they endeavor to make it a case of necessity, now is the critical moment;[45] they represent the adoption of this government as our only alternative, as the last opportunity we shall have of peaceably establishing a government;[46] they assert it to be the best system that can be formed, and that if we reject it, we will have a worse one or none at all, nay, that if we presume to propose alterations, we shall get into a labyrinth of difficulties from which we cannot be extricated, as no two states will agree in amendments, that therefore it would involve us in irreconcilable discord.[47] But they all sedulously avoid the fair field of argument, a rational investigation into the origination of the proposed government. I hope the good sense of the people will detect the fallacy of such conduct, will discover the base juggle and with becoming resolution resent the imposition.

2.7.92 That the powers of Congress ought to be strengthened, all allow, but is this a conclusive proof of the necessity to adopt the proposed plan; is it a proof that because the late convention, in the first essay upon so arduous and difficult a subject, harmonised in their ideas, that a future convention

will not, or that after a full investigation and mature consideration of the objections, they will not plan a better government and one more agreeable to the sentiments of America, or is it any proof that they can never again agree in any plan? The late convention must indeed have been inspired, as some of its advocates have asserted, to admit the truth of these positions, or even to admit the possibility of the proposed government, being such a one as America ought to adopt; for this body went upon original ground, foreign from their intentions or powers, they must therefore have been wholly uninformed of the sentiments of their constituents in respect to this form of government, as it was not in their contemplation when the convention was appointed to erect a new government, but to strengthen the old one. Indeed they seem to have been determined to monopolize the exclusive merit of the discovery, or rather as if darkness was essential to its success they precluded all communication with the people, by closing their doors; thus the well disposed members unassisted by public information and opinion, were induced by those arts that are now practising on the people, to give their sanction to this system of despotism.

2.7.93 Is there any reason to presume that a new Convention will not agree upon a better plan of government? Quite the contrary, for perhaps there never was such a coincidence on any occasion as on the present[;] the opponents to the proposed plan, at the same time in every part of the continent, harmonised in the same objections; such an uniformity of opposition is without example and affords the strongest demonstration of its solidity. Their objections too are not local, are not confined to the interests of any one particular state to the prejudice of the rest, but with a philanthropy and liberality that reflects lustre on humanity, that dignifies the character of America, they embrace the interests and happiness of the whole union[;] they do not even condescend to minute blemishes, but shew that the main pillars of the fabric are bad, that the essential principles of liberty and safety are not to be found in it, that despotism will be the necessary and inevitable consequence of its establishment.

Centinel.

V

To the People of Pennsylvania.

Friends, Countrymen, and Fellow-Citizens,

2.7.94 Mr. Wilson in a speech delivered in our Convention on Saturday the 24th instant, has conceded, nay forceably proved, that one consolidated government, will not answer for so extensive a territory as the United States

includes, that slavery would be the necessary fate of the people under such a government; his words are so remarkable, that I cannot forbear reciting them, they are as follows, viz. "The extent of country for which the new constitution was required, produced another difficulty in the business of the federal convention. It is the opinion of some celebrated writers, that to a small territory, the democratical, to a middling territory, (as Montesquieu has termed it) the monarchical, and, to an extensive territory, the despotic form of government, is best adapted. Regarding then, the wide and almost unbounded jurisdiction of the United States, at first view, the hand of despotism seemed necessary to controul, connect, and protect it; and hence the chief embarrassment rose. For, we knew that, although our constituents would chearfully submit to the legislative restraints of a free government, they would spurn at every attempt to shackle them with despotic power." See page 5 of the printed speech. And again in page 7, he says "Is it probable that the dissolution of the state governments, and the establishment of one consolidated empire would be eligible in its nature, and satisfactory to the people in its administration? I think not, as I have given reasons to shew that so extensive a territory could not be governed, connected, and preserved, but by the supremacy of despotic power. All the exertions of the most potent emperors of Rome were not capable of keeping that empire together, which, in extent, was far inferior to the dominion of America."[48]

This great point having been now confirmed by the concession of Mr. Wilson, though indeed it was self evident before, and the writers against the proposed plan of government, having proved to demonstration, that the powers proposed to be vested in Congress, will necessarily annihilate and absorb the state Legislatures and judiciaries and produce from their wreck one consolidated government, the question is determined. Every man therefore who has the welfare of his country at heart, every man who values his own liberty and happiness, in short, every description of persons, except those aspiring despots who hope to benefit by the mysery and vassalage of their countrymen, must now concur in rejecting the proposed system of government, must now unite in branding its authors with the stigma of eternal infamy. The anniversary of this great escape from the fangs of despotism, ought to be celebrated as long as liberty shall continue to be dear to the citizens of America. 2.7.95

I will repeat some of my principal arguments, and add some further remarks, on the subject of consolidation.[49] 2.7.96

The Legislative is the highest delegated power in government, all others are subordinate to it. The celebrated Montesquieu establishes it as a maxim, that legislation necessarily follows the power of taxation.[50] By the 8th sect. of article the 1st of the proposed government, "the Congress are to have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and *general welfare* of the United

States." Now, what can be more comprehensive than these words? Every species of taxation, whether external or internal are included. Whatever taxes, duties, and excises that the Congress may deem necessary to the *general welfare* may be imposed on the citizens of these states and levied by their officers. The congress are to be the absolute judges of the propriety of such taxes, in short they may construe every purpose for which the state legislatures now lay taxes, to be for the *general welfare*, they may seize upon every source of taxation, and thus make it impracticable for the states to have the smallest revenue, and if a state should presume to impose a tax or excise that would interfere with a federal tax or excise, congress may soon terminate the contention, by repealing the state law, by virtue of the following section—"To make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this constitution in the government of the United States, or in any department thereof." Indeed every law of the states may be controuled by this power. The legislative power granted for these sections is so unlimited in its nature, may be so comprehensive and boundless in its exercise, that this alone would be amply sufficient to carry the coup de grace to the state governments, to swallow them up in the grand vortex of general empire. But the legislative has an able auxiliary in the judicial department, for a reference to my second number will shew that this may be made greatly instrumental in effecting a consolidation; as the federal judiciary would absorb all others.[51] Lest the foregoing powers should not suffice to consolidate the United States into one empire, the Convention[,] as if determined to prevent the possibility of a doubt, as if to prevent all clashing by the opposition of state powers, as if to preclude all struggle for state importance, as if to level all obstacles to the supremacy of universal sway, which in so extensive a territory, would be an iron-handed despotism, have ordained by article the 6th, "That this constitution, and the laws of the United States, which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the *supreme law of the land; and the judges in every state shall be bound thereby any thing in the constitution or laws of any state to the contrary notwithstanding.*"

2.7.97 The words "pursuant to the constitution" will be no restriction to the authority of congress; for the foregoing section gives[52] them unlimited legislation; their unbounded power of taxation does alone include all others, as whoever has the purse strings will have full dominion. But the convention has superadded another power, by which the congress may stamp with the sanction of the constitution every possible law; it is contained in the following clause—"To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof. " Whatever law congress may deem necessary and proper for carrying into execution any of the powers vested in them,

may be enacted; and by virtue of this clause, they may controul and abrogate any and every of the laws of the state governments, on the allegation that they interfere with the execution of any of their powers, and yet these laws will "be made in pursuance of the constitution," and of course will "be the supreme law of the land, and the judges in every state shall be bound thereby, any thing in the *constitution* or *laws* of any state to the contrary notwithstanding."

2.7.98 There is no reservation made in the whole of this plan in favor of the rights of the separate states. In the present plan of confederation made in the year 1778,[53] it was thought necessary by article the 2d to declare that "each state retains its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this confederation *expressly* delegated to the United States in Congress assembled." *Positive* grant was not *then* thought sufficiently descriptive and restrictive upon congress, and the omission of such a declaration *now*, when such great devolutions of power are proposed, manifests the design of consolidating the states.

2.7.99 What restriction does Mr. Wilson pretend there is in the new constitution to the supremacy of despotic sway over the United States? What barrier does he assign for the security of the state governments? Why truly a mere cobweb of a limit! by interposing the shield of what will become mere *form*, to check the *reality* of power. He says, that the existence of the state governments are essential to the organization of congress, that the former is made the necessary basis of the latter, for the federal senators and president are to be appointed by the state legislatures; and that hence all fears of a consolidation are groundless and imaginary.[54] It must be confessed, as reason and argument would have been foreign to the defence of the proposed plan of government, Mr. Wilson has displayed much ingenuity on this occasion, he has involved the subject in all the mazes of sophistry, and by subtil distinctions, he has established principles and positions, that exist only in his own fertile imagination. It is a solecism in politics for two co-ordinate sovereignties to exist together, you must separate the sphere of their jurisdiction, or after running the race of dominion for some time, one would necessarily triumph over the other; but in the mean time the subjects of it would be harrassed with double impositions to support the contention; however the strife between congress and the states could not be of long continuance, for the former has a decisive superiority in the outset, and has moreover the power by the very constitution itself to terminate it, when expedient.

2.7.100 As this necessary connexion, as it has been termed, between the state governments and the general government, has been made a point of great magnitude by the advocates of the new plan, as it is the only obstacle alledged by them against a consolidation, it ought to be well considered. It is declared by the proposed plan, that the federal senators and the electors who chuse the president of the United States, shall be appointed by the state

legislatures for the long period of six and four years respectively;—how will this connexion prevent the state legislatures being divested of every important, every efficient power? may not they, will not they dwindle into mere boards of appointment, as has ever happened in other nations to public bodies, who, in similar circumstances, have been so weak as to part with the essentials of power? Does not history abound with such instances? And this may be the mighty amount of this inseparable connexion, which is so much dwelt upon as the security of the state governments. Yet even this shadow of a limit against consolidation, may be annihilated by the imperial fiat, without any violation of even the forms of the constitution[;] section 4th of article the 1st has made a provision for this, when the people are sufficiently fatigued with the useless expence of maintaining the *forms* of departed power and security, and when they shall pray to be relieved from the imposition. This secton cannot be too often repeated, as it gives such a latitude to the designing, as it revokes every other part of the constitution that may be tolerable, and as it may enable the administration under it, to complete the system of despotism; it is in the following words, viz. "The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; *but the Congress may at any time by law make or alter such regulations, except as to the place of chusing senators.*" The only apparent restriction in this clause, is as to the *place* of appointing senators, but even this may be rendered of no avail, for as the Congress have the controul over the time of appointment of both senators and representatives, they may under the pretence of an apprehension of invasion, upon the pretence of the turbulence of what they may stile a faction, and indeed pretences are never wanting to the designing, they may postpone the time of the election of the senators and the representatives from period to period to perpetuity; thus they may[,] and if they may, they certainly will[,] from the lust of dominion, so inherent in the mind of man, relieve the people from the trouble of attending elections by condescending to create themselves. Has not Mr. Wilson avowed it in fact? Has he not said in the Convention that it was necessary that Congress should possess this power as the means of its own preservation[;] otherwise says he, an invasion, a civil war, a faction, or a secession of a minority of the assembly might prevent the representation of a state in Congress.[55]

2.7.101 The advocates of the proposed government must be hard driven, when they represent, that because the legislatures of this and the other states have exceeded the due bounds of power, notwithstanding every guard provided by their constitutions; that because the lust of arbitrary sway is so powerful as sometimes to get the better of every obstacle; that therefore we should give full scope to it, for that all restriction would be useless and nugatory. And further, when they tell you that a good administration will atone for all the defects in the government, which, say they, you must necessarily have, for how can it be otherwise, your rulers are to be taken from among your-

selves. My fellow citizens, these aspiring despots, must indeed have a great contempt for your understandings, when they hope to gull you out of your liberties by such reasoning; for what is the primary object of government, but to check and controul the ambitious and designing[;][56] how then can moderation and virtue be expected from men, who will be in possession of absolute sway, who will have the United States at their disposal? They would be more than men, who could resist such temptation! their being taken from among the people, would be no security; tyrants are of native growth in all countries, the greatest bashaw in Turky has been one of the people, as Mr. Wilson tells you the president-general will be.[57] What consolation would this be, when you shall be suffering under his oppression.

Centinel.

Philadelphia, Nov. 30, 1787.

VI

To the People of Pennsylvania.

Man is the glory, jest, and riddle of the world.—Pope.[58]

Incredible transition! the people who, seven years ago, deemed every earthly good, every other consideration, as worthless, when placed in competition with liberty, that heaven-born blessing, that zest of all others; the people, who, actuated by this noble ardor of patriotism, rose superior to every weakness of humanity, and shone with such dazzling lustre amidst the greatest difficulties; who, emulous of eclipsing each other in the glorious assertion of the dignity of human nature, courted every danger, and were ever ready, when necessary, to lay down their lives at the altar of liberty: I say the people, who exhibited so lately a spectacle, that commanded the admiration, and drew the plaudits of the most distant nations, are now reversing the picture, are now lost to every noble principle, are about to sacrifice that inestimable jewel liberty, to the genius of despotism. A *golden phantom* held out to them, by the crafty and aspiring despots among themselves, is alluring them into the fangs of arbitrary power; and so great is their infatuation, that it seems, as if nothing short of the reality of misery necessarily attendant on slavery, will rouse them from their false confidence, or convince them of the direful deception; but then alas! it will be too late, the chains of despotism will be fast rivetted and all escape precluded. 2.7.102

For years past, the harpies of power have been industriously inculcating the idea that all our difficulties proceed from the impotency of Congress, and have at length succeeded to give to this sentiment almost universal 2.7.103

currency and belief: the devastations, losses and burthens occasioned by the late war; the excessive importations of foreign merchandise and luxuries, which have drained the country of its specie and involved it in debt, are all overlooked, and the inadequacy of the powers of the present confederation is erroneously supposed to be the only cause of our difficulties; hence persons of every description are revelling in the anticipation of the halcyon days, consequent on the establishment of the new constitution.—What gross deception and fatal delusion! Although very considerable benefit might be derived from strengthening the hands of Congress, so as to enable them to regulate commerce, and counteract the adverse restrictions of other nations, which would meet with the concurrence of all persons; yet this benefit, is accompanied in the new constitution with the scourge of despotic power, that will render the citizens of America tenants at will of every species of property, of every enjoyment, and make them the meer drudges of government. The gilded bait conceals corrosives that will eat up their whole substance.

2.7.104 Since the late able discussion,[59] all are now sensible of great defects in the new constitution, are sensible that power is thereby granted without limitation or restriction; yet such is the impatience of the people to reap the golden harvest of regulated commerce, that they will not take time to secure their liberty and happiness, nor even to secure the benefit of the expected wealth; but are weakly trusting their every concern to the discretionary disposal of their future rulers: are content to risque every abuse of power, because they are promised a good administration, because moderation and self-denial are the characteristic features of men in possession of absolute sway. What egregious folly! What superlative ignorance of the nature of power does such conduct discover!

2.7.105 History exhibits this melancholy truth, that slavery has been the lot of nearly the whole of mankind in all ages, and, that the very small portion who have enjoyed the blessings of liberty, have soon been reduced to the common level of slavery and misery. The cause of this general vassalage may be traced to a principle of human nature, which is more powerful and operative than all the others combined; it is that lust of dominion that is inherent in every mind, in a greater or less degree; this is so universal and ever active a passion as to influence all our ancestors; the different situation and qualifications of men only modifies and varies the complexion and operation of it.

2.7.106 For this darling pre-eminence and superiority, the merchant, already possessed of a competency, adventures his all in the pursuit of greater wealth; it is for this, that men of all descriptions, after having amassed fortunes, still persevere in the toils of labour; in short, this is the great principle of exertion in the votaries of riches, learning, and fame.

2.7.107 In a savage state, pre-eminence is the result of bodily strength and intrepidity, which compels submission from all such as have the misfortune to be less able; therefore the great end of civil government is to protect the

weak from the oppression of the powerful, to put every man upon the level of equal liberty; but here again the same lust of dominion by different means frustrates almost always this salutary intention. In a polished state of society, wealth, talents, address and intrigue are the qualities that attain superiority in the great sphere of government.

2.7.108 The most striking illustration of the prevalence of this lust of dominion is, that the most strenuous assertors of liberty in all ages, after successfully triumphing over tyranny, have themselves become tyrants, when the unsuspicious confidence of an admiring people have entrusted them with unchecked power: Rare are the instances of self-denial, or consistency of conduct in the votaries of liberty, when they have become possessed of the reins of authority; it has been the peculiar felicity of this country, that her *great Deliverer* did not prove a *Cromwell* nor a *Monk*.

2.7.109 Compare the declarations of the most zealous assertors of *religious* liberty, whilst under the lash of persecution, with their conduct when in power; you will find that even the benevolence and humility inculcated in the gospels, prove no restraint upon this love of domination—The mutual contentions of the several sects of religion in England some ages since, are sufficient evidence of this truth.

2.7.110 The annals of mankind demonstrate the precarious tenure of privileges and property dependent upon the will and pleasure of rulers; these illustrate the fatal danger of relying upon the moderation and self-denial of men exposed to the temptations that the Congress under the new constitution will be. The lust of power or dominion is of that nature, as seeks to overcome every obstacle, and does not remit its exertions, whilst any object of conquest remains, nothing short of the plenitude of dominion, will satisfy this cursed demon: Therefore, liberty is only to be preserved by a due responsibility in the government, and by the constant attention of the people; whenever that responsibility has been lessened, or this attention remitted, in the same degree has arbitrary sway prevailed.

2.7.111 The celebrated *Montesquieu* has warned mankind of the danger of an implicit reliance on rulers; he says, that "a perpetual *jealousy* respecting liberty, is absolutely requisite in all free states,"[60] and again, "that slavery is ever preceded by sleep."[61]

2.7.112 I shall conclude this number with an extract from a speech delivered by Lord *George Digby*, afterwards *Earl* of *Bristol*, in the *English* Parliament, on the triennial bill in the year 1641, viz. "It hath been a maxim among the wisest legislators that whoever means to settle good laws, must proceed in them with a sinister opinion of all mankind; and suppose that whosoever is not wicked, it is for want only of the opportunity. It is that opportunity of being ill, Mr. Speaker, that we must take away, if ever we mean to be happy, which can never be done, but by *the frequency of parliaments*.

"No state can wisely be confident of any public minister's continuing good, longer than the rod is held over him.

"Let me appeal to all those that were present in this house at the agitation

of the *petition of right:* And let them tell themselves truly of whose promotion to the management of public affairs do they think the generality would, at that time, have had better hopes, than of Mr. *Noy,* and Sir *Thomas Wentworth;* both having been at that time and in that business as I have heard, most keen and active patriots, and the latter of them, to the eternal aggravation of his infamous treachery to the commonwealth be it spoken, the first mover, and insister to have this clause added to the *petition of right,* viz.

"That for the comfort and safety of his subjects, his Majesty would be pleased to declare his will and pleasure, that all his ministers should serve him according to the laws and statutes of the realm.

"And yet, Mr. Speaker, to whom now can all the inundations upon our *liberties,* under pretence of law, and the late ship-wreck at once of all our property be attributed more than to *Noy,* and all those other mischiefs whereby this monarchy hath been brought almost to the brink of destruction, so much to any as to that *grand apostate* to the commonwealth, the now Lieutenant of Ireland, Sir Thomas Wentworth? Let every man but consider those men as once they were." British Liberties, page 184 and 185.[62]

Centinel.

Philadelphia, December 22, 1787.

VII

To the People of Pennsylvania.

Friends and Fellow-Citizens!

2.7.113 The admiring world lately beheld the sun of liberty risen to meridian splendour in this western hemisphere, whose chearing rays began to dispel the glooms of even trans-atlantic despotism: the patriotic mind, enraptured with the glowing scene, fondly anticipated an universal and eternal day to the orb of freedom; but the horizon is already darkened and the glooms of slavery threaten to fix their empire. How transitory are the blessings of this life! Scarcely have four years elapsed since these United States, rescued from the domination of foreign despots by the unexampled heroism and perseverance of its citizens, at such great expence of blood and treasure, when they are about to fall a prey to the machinations of a profligate junto at home, who seizing the favorable moment, when the temporary and extraordinary difficulties of the people have thrown them off their guard, and lulled that jealousy of power so essential to the preservation of freedom, have been too successful in the sacrilegious attempt; however I am confident that

this formidable conspiracy will end in the confusion and infamy of its authors; that if necessary, the avenging sword of an abused people will humble these aspiring despots to the dust, and that their fate, like that of Charles the First of England, will deter such attempts in future, and prove the confirmation of the liberties of America until time shall be no more.

2.7.114 One would imagine by the insolent conduct of these harpies of power, that they had already triumphed over the liberties of the people, that the chains were rivetted and tyranny established. They tell us all further opposition will be vain, as this state has passed the rubicon. Do they imagine the freemen of Pennsylvania will be thus trepaned out of their liberties; that they will submit without a struggle? They must indeed be inebriated with the lust of dominion to indulge such chimerical ideas. Will the act of one sixth of the people, and this too founded on deception and surprise, bind the community? Is it thus that the altar of liberty, so recently crimsoned with the blood of our worthies, is to be prostrated and despotism reared on its ruins? Certainly not. The solemn mumery that has been acting in the name of the people of Pennsylvania will be treated with the deserved contempt; it has served indeed to expose the principles of the men concerned, and to draw a line of discrimination between the real and affected patriots.

2.7.115 Impressed with an high opinion of the understanding and spirit of my fellow citizens, I have in no stage of this business entertained a doubt of its eventual defeat; the momentary delusion, arising from an unreserved confidence placed in some of the characters whose names sanctioned this scheme of power, did not discourage me: I foresaw that this blind admiration would soon be succeeded by rational investigation, which, stripping the monster of its gilded covering, would discover its native deformity.

2.7.116 Already the enlightened pen of patriotism, aided by an able public discussion, has dispelled the mist of deception, and the great body of the people are awakened to a due sense of their danger, and are determined to assert their liberty, if necessary by the sword, but this mean need not be recurred to, for who are their enemies? A junto composed of the lordly and high minded gentry, of the profligate and the needy office-hunters; of men principally who in the late war skulked from the common danger. Would such characters dare to face the majesty of a free people? No.—All the conflict would be between the offended justice and generosity of the people, whether these sacrilegious invaders of their dearest rights should suffer the merited punishment, or escape with an infamous contempt?

2.7.117 However, as additional powers are necessary to Congress, the people will no doubt see the expediency of calling a convention for this purpose as soon as may be by applying to their representatives in assembly, at their next session, to appoint a suitable day for the election of such Convention.

Centinel.

Philadelphia, December 27, 1787.

VIII

To the People of Pennsylvania.

Fellow Citizens,

2.7.118 Under the benign influence of liberty, this country, so recently a rugged wilderness and the abode of savages and wild beasts, has attained to a degree of improvement and greatness, in less than two ages, of which history furnishes no parallel: It is here that human nature may be viewed in all its glory; man assumes the station designed him by the creation; a happy equality and independency pervades the community; it is here the human mind, untrammeled by the restraints of arbitrary power, expands every faculty: as the field to fame and riches is open to all, it stimulates universal exertion, and exhibits a lively picture of emulation, industry and happiness. The unfortunate and oppressed of all nations, fly to this grand asylum, where liberty is ever protected, and industry crowned with success.

2.7.119 But as it is by comparison only that men estimate the value of any good, they are not sensible of the worth of those blessings they enjoy, until they are deprived of them; hence from ignorance of the horrors of slavery, nations, that have been in possession of that rarest of blessings, liberty, have so easily parted with it: when groaning under the yoke of tyranny what perils would they not encounter, what consideration would they not give to regain the inestimable jewel they had lost; but the jealously of despotism guards every avenue to freedom, and confirms its empire at the expence of the devoted people, whose property is made instrumental to their misery, for the rapacious hand of power seizes upon every thing; despair presently succeeds, and every noble faculty of the mind being depressed, and all motive to industry and exertion being removed, the people are adapted to the nature of the government, and drag out a listless existence.

2.7.120 If ever America should be enslaved it will be from this cause, that they are not sensible of their peculiar felicity, that they are not aware of the value of the heavenly boon, committed to their care and protection, and if the present conspiracy fails, as I have no doubt will be the case, it will be the triumph of reason and philosophy, as these United States have never felt the iron hand of power, or experienced the wretchedness of slavery.

2.7.121 The conspirators against our liberties have presumed too much on the maxim that nations do not take the alarm, until they feel oppression; the enlightened citizens of America have on two memorable occasions convinced the tyrants of Europe that they are endued with the faculty of foresight, that they will jealously guard against the first introduction of tyranny, however speciously glossed over, or whatever appearance it may assume: It was not the mere amount of *the duty on stamps,* or *tea* that America opposed, they were considered as signals of approaching des-

potism, as precedents whereon the superstructure of arbitrary sway was to be reared.

Notwithstanding such illustrious evidence of the good sense and spirit of the people of these United States, and contrary to all former experience of mankind, which demonstrates that it is only by gradual and imperceptible degrees that nations have hitherto been enslaved, except in case of conquest by the sword; the authors of the present conspiracy are attempting to seize upon absolute power at one grasp, impatient of dominion they have adopted a decisive line of conduct, which if successful, would obliterate every trace of liberty. I congratulate my fellow citizens that the infatuated confidence of their enemies has so blinded their ambition, that their defeat must be certain and easy, if imitating the refined policy of successful despots, they had attacked the citadel of liberty by sap, and gradually undermined its outworks, they would have stood a fairer chance of effecting their design; but in this enlightened age thus rashly to attempt to carry the fortress by storm, is folly indeed. They have even exposed some of their batteries prematurely, and thereby unfolded every latent view, for the unlimited power of taxation would alone have been amply sufficient for every purpose; by a proper application of this, the will and pleasure of the rulers would of course have become the supreme law of the land; therefore there was no use in portraying the ultimate object, by superadding the form to reality of supremacy in the following clause, viz. that which empowers the new congress to make all laws that may be necessary and proper for carrying into execution any of their powers, by virtue of which every possible law will be constitutional, as they are to be the sole judges of the propriety of such laws,[63] that which ordains that their acts shall be the supreme law of the land, any thing in the laws or constitution of any state to the contrary notwithstanding; that which gives Congress the absolute controul over the time and mode of its appointment and election, whereby, independent of any other means, they may establish hereditary despotism; that which authorises them to keep on foot at all times a standing army; and that which subjects the militia to absolute command—and to accelerate the subjugation of the people, trial by jury in civil cases and the liberty of the press are abolished. 2.7.122

So flagrant, so audacious a conspiracy against the liberties of a free people is without precedent. Mankind in the darkest ages have never been so insulted; even then, tyrants found it necessary to pay some respect to the habits and feelings of the people, and nothing but the name of a Washington could have occasioned a moment's hesitation about the nature of the new plan, or saved its authors from the execration and vengeance of the people, which, eventually will prove an aggravation of their treason; for America will resent the imposition practiced upon the unsuspicious zeal of her *illustrious deliverer*, and vindicate her character from the aspersions of these enemies of her happiness and fame. 2.7.123

The advocates of this plan have artfully attempted to veil over the true 2.7.124

nature and principles of it with the names of those respectable characters that by consummate cunning and address they have prevailed upon to sign it, and what ought to convince the people of the deception and excite their apprehensions, is that with every advantage which education, the science of government and of law, the knowledge of history and superior talents and endowments, furnish the authors and advocates of this plan with, they have from its publication exerted all their power and influence to prevent all discussion of the subject, and when this could not be prevented they have constantly avoided the ground of argument and recurred to declamation, sophistry and personal abuse, but principally relied upon the magic of names. Would this have been their conduct, if their cause had been a good one? No, they would have invited investigation and convinced the understandings of the people.

2.7.125 But such policy indicates great ignorance of the good sense and spirit of the people, for if the sanction of every convention throughout the union was obtained by the means these men are practising; yet their triumph would be momentary, the favorite object would still elude their grasp; for a good government founded on fraud and deception could not be maintained without an army sufficiently powerful to compel submission, which the *well born* of America could not speedily accomplish. However the complexion of several of the more considerable states does not promise even this point of success. The Carolinas, Virginia, Maryland, New-York and New-Hampshire have by their wisdom in taking a longer time to deliberate, in all probability saved themselves from the disgrace of becoming the dupes of this gilded bait, as experience will evince that it need only be properly examined to be execrated and repulsed.

2.7.126 The merchant, immersed in schemes of wealth, seldom extends his views beyond the immediate object of gain; he blindly pursues his seeming interest, and sees not the latent mischief; therefore it is, that he is the last to take the alarm when public liberty is threatened. This may account for the infatuation of some of our merchants, who, elated with the imaginary prospect of an improved commerce under the new government, overlook all danger: they do not consider that commerce is the hand-maid of liberty, a plant of free growth that withers under the hand of despotism, that every concern of individuals will be sacrificed to the gratification of the men in power, who will institute injurious monopolies and shackle commerce with every device of avarice; and that property of every species will be held at the will and pleasure of rulers.

2.7.127 If the nature of the case did not give birth to these well-founded apprehensions, the principles and characters of the authors and advocates of the measure ought. View the monopolising spirit of the principal of them.[64] See him converting a bank, instituted for common benefit, to his own and creatures [`] emolument, and by the aid thereof, controuling the credit of the state, and dictating the measures of government. View the vassalage of our

merchants, the thraldom of the city of Philadelphia, and the extinction of that spirit of independency in most of its citizens so essential to freedom. View this Collosus attempting to grasp the commerce of America and meeting with a sudden repulse, in the midst of his immense career, receiving a shock that threatens his very existence. View the desperate fortunes of many of his co-adjutors and dependants, particularly the bankrupt situation of the principal instrument under the *great man* in promoting the new government, whose superlative arrogance, ambition and rapacity, would need the spoils of thousands to gratify; view his towering aspect, he would have no bowels of compassion for the oppressed, he would *overlook* all their sufferings.[65] Recollect the strenuous and unremitted exertions of these men, for years past, to destroy our admirable constitution, whose object is to secure equal liberty and advantages to all, and the great obstacle in the way of their ambitious schemes, and then answer, whether these apprehensions are chimerical, whether such characters will be less ambitious, less avaritious, more moderate, when the privileges, property, and every concern of the people of the United States shall lie at their mercy, when they shall be in possession of absolute sway?

Centinel.

Philadelphia; December 29, 1787.

IX

To the People of Pennsylvania.

Fellow Citizens,

2.7.128 You have the peculiar felicity of living under the most perfect system of local government in the world; prize then this invaluable blessing as it deserves: Suffer it not to be wrested from you, and the scourge of despotic power substituted in its place, under the specious pretence of vesting the general government of the United States with necessary power; that this would be the inevitable consequence of the establishment of the new constitution, the least consideration of its nature and tendency is sufficient to convince every unprejudiced mind. If you were sufficiently impressed with your present favored situation, I should have no doubt of a proper decision of the question in discussion.

2.7.129 The highest illustration of the excellence of the constitution of this commonwealth, is, that from its first establishment, the ambitious and profligate have been united in a constant conspiracy to destroy it; so sensible are they that it is their great enemy, that it is the great palladium of equal liberty, and the property of the people from the rapacious hand of power: The annals of

mankind do not furnish a more glorious instance of the triumph of patriotism over the lust of ambition aided by most of the wealth of the state. The few generally prevail over the many by uniformity of council, unremitted and persevering exertion, and superior information and address; but in Pennsylvania the reverse has happened; here the *well born* have been baffled in all their efforts to prostrate the altar of liberty for the purpose of substituting their own insolent sway that would degrade the freemen of this state into servile dependence upon the *lordly* and *great:* However, it is not the nature of ambition to be discouraged; it is ever ready to improve the first opportunity to rear its baneful head and with irritated fury to wreak its vengeance on the votaries of liberty. The present conspiracy is a continental exertion of the *well born* of America to obtain that darling domination, which they have not been able to accomplish in their respective states. Of what complexion were the deputies of this state in the general convention? *Six* out of *eight* were the inveterate enemies of our inestimable constitution, and the principals of that faction that for ten years past have kept the people in continual alarm for their liberties. Who are the advocates of the new constitution in this state? They consist of the same faction, with the addition of a few deluded well meaning men, but whose number is daily lessening.

2.7.130 These conspirators have come forward at a most favorable conjuncture, when the state of public affairs has lulled all jealousy of power: Emboldened by the sanction of the august name of a *Washington*, that they have prostituted to their purpose, they have presumed to overleap the usual gradations to absolute power, and have attempted to seize at once upon the supremacy of dominion. The new instrument of government does indeed make a fallacious parade of some remaining privileges, and insults the understandings of the people with the semblance of liberty in some of its artful and deceptive clauses: which form but a flimsy veil over the reality of tyranny, so weakly endeavored to be concealed from the eye of freedom. For, of what avail are the few inadequate stipulations in favor of the rights of the people, when they may be effectually counteracted and destroyed by virtue of other clauses; when these enable the rulers to renounce all dependence on their constituents, and render the latter tenants at will of every concern? The new constitution is in fact a *carte blanche*, a surrender at discretion to the will and pleasure of our rulers: as this has been demonstrated to be the case, by the investigation and discussion that have taken place, I trust the same good sense and spirit which have hitherto enabled the people to triumph over the wiles of ambition, will be again exerted for their salvation. The accounts from various parts of the country correspond with my warmest hopes, and justify my early predictions of the eventual defeat of this scheme of power and office-making.

2.7.131 The genius of liberty has sounded the alarm, and the dormant spirit of her votaries is reviving with enthusiastic ardor; the like unanimity which formerly distinguished them in their conflict with foreign despots, promises to

crown their virtuous opposition on the present occasion, with signal success. The structure of despotism that has been reared in this state, upon deception and surprise, will vanish like the baseless fabric of a dream and leave not a trace behind.

2.7.132 The parasites and tools of power in Northampton county ought to take warning from the fate of the Carlisle junto, lest like them, they experience the resentment of an injured people. I would advise them not to repeat the imposition of a set of fallacious resolutions as the sense of that county, when in fact, it was the act of a despicable few, with Alexander Paterson at their head, whose achievements at Wyoming, as the meaner instrument of unfeeling avarice, have rendered infamously notorious; but yet, like the election of a Mr. Sedgwick for the little town of Stockbridge, which has been adduced as evidence of the unanimity of the western counties of Massachusetts state in favor of the new constitution, when the fact is far otherwise, this act of a few individuals will be sounded forth over the continent as a testimony of the zealous attachment of the county of Northampton to the new constitution.[66] By such wretched and momentary deceptions do these harpies of power endeavor to give the complexion of strength to their cause. To prevent the detection of such impositions, to prevent the reflection of the rays of light from state to state, which, producing general illumination, would dissipate the mist of deception, and thereby prove fatal to the new constitution, all intercourse between the patriots of America is as far as possible cut off; whilst on the other hand, the conspirators have the most exact information, a common concert is every where evident, they move in unison. There is so much mystery in the conduct of these men, such systematic deception, and fraud characterises all their measures, such extraordinary solicitude shewn by them to precipitate and surprise the people into a blind and implicit adoption of this government, that it ought to excite the most alarming apprehensions in the minds of all those who think their privileges, property and welfare worth securing.

2.7.133 It is a fact that can be established, that during almost the whole of the time that the late convention of this state were assembled, the newspapers published in New-York, by Mr. Greenleaf, which contains the essays written there against the new government, such as the patriotic ones of Brutus, Cincinnatus, Cato, etc.,[67] sent as usual by the printer of that place to the printers of this city, miscarried in their conveyance, which prevented the republication in this state of many of these pieces, and since that period great irregularity prevails; and I stand informed that the printers in New-York complain that the free and independent newspapers of this city do not come to hand; whilst on the contrary, we find the devoted vehicles of despotism pass uninterrupted. I would ask what is the meaning of the new arrangement at the Post-Office, which abridges the circulation of newspapers at this momentous crisis, when our every concern is dependant upon a proper decision of the subject in discussion[68]—No trivial excuse will be

admitted; the Centinel will, as from the first approach of despotism, warn his countrymen of the insidious and base strategems that are practising to hoodwink them out of their liberties.

2.7.134 The more I consider the manœvres that are practising, the more am I alarmed—foreseeing that the juggle cannot long be concealed, and that the spirit of the people will not brook the imposition, they have guarded as they suppose against any danger arising from the opposition of the people, and rendered their struggles for liberty impotent and ridiculous. What otherwise is the meaning of disarming the militia, for the purpose as it is said, of repairing their musquets at such a particular period? Does not the timing of the measure determine the intention? I was ever jealous of the select militia, consisting of infantry and troops of horse, instituted in this city and in some of the counties, without the sanction of law, and officered principally by the devoted instruments of the *well born*, although the illustrious patriotism of one of them, has not corresponded with the intention of appointing him. Are not these corps provided to suppress the first efforts of freedom, and to check the spirit of the people until a regular and sufficiently powerful military force shall be embodied to rivet the chains of slavery on a deluded nation. What confirms these apprehensions is the declaration of a certain Major, an active instrument in this business, and the echo of the principal conspirators, who has said, he should deem the cutting off of five thousand men, as a small sacrifice, a cheap purchase for the establishment of the new constitution.[69]

Centinel.

Philadelphia, January 5, 1788.

X

To the People of Pennsylvania.

Fellow Citizens,

2.7.135 What illustrious evidence and striking demonstration does the present momentous discussion afford of the inestimable value of the liberty of the press? No doubt now remains, but that it will prove the rock of our political salvation. Despotism, with its innumerable host of evils, by gliding through the mist of deception, had gained some of the principal works, had made a lodgement in the very citadel of liberty before it was discovered, and was near carrying the fortress by surprise: at this imminent alarming crisis the centries from the watch-towers sounded the alarm, and aroused the dormant votaries of liberty to a due sense of their danger; who, with an alacrity and spirit suited to the exigence, answered to the call, repulsed the enemy,

dislodged it from most of its acquisitions, and nothing is now wanting to a total rout and compleat defeat, but a general discharge from the artillery of freedom. As the shades of night fly the approach of the radiant sun, so does despotism before the majesty of enlightened truth; wherever free discussion is allowed, this is invariably the consequence. Since the press has been unshackled in Pennsylvania, what an astonishing transition appears in the sentiments of the people! Infatuation is at an end, execration and indignation have succeeded to blind admiration and mistaken enthusiasm. The rampant insolence of the conspirators is prostrated, black dispair has taken possession of many of them, their countenances proclaim their defeat, and express serious apprehension for their personal safety from the rising resentment of injured freemen.

James, the Caledonian, lieutenant general of the myrmidons of power, 2.7.136
under Robert, the cofferer, who, with his aid du camp, *Gouvero*, the cunning man, has taken the field in Virginia;[70] I say James, in this exigence summonses a grand council of his partizans of this city, and represents, in the most pathetic moving language, the deplorable situation of affairs, stimulates them to make a vigorous effort to recover the ground they have lost and establish their empire; that for this purpose, a generous contribution must be made by all those who expect to taste the sweets of power, or share in the fruits of dominion, in order to form a fund adequate to the great design, that may put them in possession of the darling object: then recommends that a committee be appointed of those who are gifted with Machiavelian talents, of those who excel in ingenuity, artifice, sophistry and the refinements of faslehood, who can assume the pleasing appearance of truth and bewilder the people in all the mazes of error; and as the task will be arduous, and requires various abilities and talents, the business ought to be distributed, and different parts assigned to the members of the committee, as they may be respectively qualified; some by ingenious sophisms to explain away and counteract those essays of patriotism that have struck such general conviction; some to manufacture extracts of letters and notes from correspondents, to give the complexion of strength to their cause, by representing the unanimity of all corners of America in favor of the new constitution; and others to write reams of letters to their tools in every direction, furnishing them with the materials of propagating error and deception; in short that this committee ought to make the press groan and the whole country reverberate with their productions. Thus to overpower truth and liberty by the din of empty sound and the delusion of falsehood.

The conspirators, deceived by their first success, grounded on the un- 2.7.137
reserved confidence of the people, do not consider that with the detection of their views, all chance of success is over; that suspicion once awakened, is not so soon to be lulled, but with eagle-eye will penetrate all their wiles, and detect their every scheme, however deeply laid, or speciously glossed. The labours of their committee will be unavailing, the point of deception is

passed, the rays of enlightened patriotism have diffused general illumination. However, this new effort will serve to shew the perseverance of ambition and the necessity of constant vigilance in the people for the preservation of their liberty.

2.7.138 Already we recognize the ingenuity and industry of this committee; the papers teem with paragraphs, correspondents, etc. that exhibit a picture which bears no resemblance to the original; if we view this mirror for the representation of the sentiments of the people, a perfect harmony seems to prevail, every body in every place are charmed with the new Constitution, consider it as a gift from heaven, as their only salvation, etc. etc. etc. and I am informed expresses are employing to waft the delusion to the remotest corners; such a scene of bustle, lying, and activity, was never exhibited since the days of Adam. The contributions to the grand fund are so great, that it is whispered a magazine of all the apparatus of war is to be immediately provided, and if all other means fail, force is to be recurred to, which they hope will successfully terminate the disagreeable discussion of the rights of mankind, of equal liberty, etc. and thus establish a due subordination to the *well born few*.

Centinel.

XI[71]

To the People of Pennsylvania.

Fellow Citizens,

2.7.139 The arguments upon which the advocates of the new constitution the most dwell, are the distresses of the community, the evils of anarchy, and the horrible consequences that would ensue from the dissolution of the union of the states, and the institution of separate confederacies or republics: The unanimity of the federal convention, and the sanction of great names, can be no further urged as an argument after the exposition made by the attorney-general of Maryland, who was a member of that convention; he has opened such a scene of discord and accommodation of republicanism to despotism as excite the most serious apprehensions in every patriotic mind.[72] The first argument has been noticed in the preceding essays;[73] wherein it is shewn that this is not the criterion whereby to determine the merits of the new constitution; that notwithstanding the reality of the distresses of the people, the new constitution may not only be inadequate as a remedy, but destructive of liberty, and the completion of misery: The remaining two arguments will be discussed in this number; their futility elucidated; and thus the medium of deception being dissipated, the public atten-

tion, with undiverted, undiminished force, will be directed to the proper object, will be confined to the consideration of the nature and construction of the plan of government itself, the question will then be, whether this plan be calculated for our welfare, or misery; whether it is the temple of liberty, or the structure of despotism? and as the former, or the latter, shall appear to be the case, to adopt, or reject it accordingly, otherwise to banish the demon of domination by suitable amendments and qualifications.

2.7.140 The evils of anarchy have been pourtrayed with all imagery of language, in the glowing colours of eloquence; the affrighted mind is thence led to clasp the new constitution as the instrument of deliverance, as the only avenue to safety and happiness:[74] To avoid the possible and transitory evils of one extreme, it is seduced into the certain and permanent misery necessarily attendant on the other. A state of anarchy from its very nature, can never be of long continuance; the greater its violence, the shorter the duration; order and security are immediately sought by the distracted people beneath the shelter of equal laws, and the salutary restraints of regular government; and if this be not attainable, absolute power is assumed by the *one*, or the *few*, who shall be the most enterprising and successful. If anarchy, therefore, were the inevitable consequence of rejecting the new constitution, it would be infinitely better to incur it; for even then there would be at least the chance of a good government rising out of licentiousness; but to rush at once into despotism, because there is a bare possibility of anarchy ensuing from the rejection, or from what is yet more visionary, the small delay that would be occasioned by a revision and correction of the proposed system of government, is so superlatively weak, so fatally blind, that it is astonishing any person of common understanding should suffer such an imposition to have the least influence on his judgement; still more astonishing, that so flimsy and deceptive a doctrine should make converts among the enlightened freemen of America, who have so long enjoyed the blessings of liberty; but when I view among such converts, men otherwise *pre-eminent*, it raises a blush for the weakness of humanity, that these her brightest ornaments should be so dim-sighted to what is self-evident to most men, that such imbecility of judgement should appear where so much perfection was looked for; this ought to teach us to depend more on our own judgement and the nature of the case, than upon the opinions of the greatest and best of men, who, from *constitutional* infirmities, or *particular* situations may sometimes view an object through a delusive medium; but the opinions of great men are more frequently the dictates of ambition, or private interest.

2.7.141 The source of the apprehensions of this so much dreaded anarchy would upon investigation be found to arise from the artful suggestions of designing men, and not from a rational possibility grounded on the actual state of affairs; the least reflection is sufficient to detect the fallacy to shew that there is no one circumstance to justify the production of such an event: On the contrary, a short time will evince to the utter dismay and confusion of

the conspirators, that a perseverance in cramming down their scheme of power upon the freemen of this state, will inevitably produce *an anarchy* destructive of their darling domination, and *may* kindle a flame prejudicial to their safety; they should be cautious not to trespass too far on the forbearance of freemen, when wresting their dearest concerns; but prudently retreat from the gathering storm.

2.7.142 The other spectre that has been raised to terrify and alarm the people out of the exercise of their judgement on this great occasion, is the dread of our splitting into separate confederacies or republics, that might become rival powers and consequently liable to mutual wars from the usual motives of contention. This is an event still more improbable than the foregoing; it is a presumption unwarrantable, either by the situation of affairs, or the sentiments of the people; no disposition leading to it exists; the advocates of the new constitution seem to view such a separation with horror, and its opponents are strenuously contending for a confederation that shall embrace all America under its comprehensive and salutary protection. This hobgoblin appears to have sprung from the deranged brain of *Publius*, a New-York writer, who, mistaking sound for argument, has with Herculean labour accumulated myriads of unmeaning sentences, and *mechanically* endeavored to force conviction by a torrent of misplaced words; he might have spared his readers the fatigue of wading through his long-winded disquisitions on the direful effects of the contentions of inimical states, as totally inapplicable to the subject he was *professedly* treating; this writer has devoted much time, and wasted more paper in combating chimeras of his own creation:[75] However, for the sake of argument, I will admit, that the necessary consequence of rejecting, or delaying the establishment of the new constitution, would be the dissolution of the union, and the institution of even rival and inimical republics; yet ought such an apprehension, if well founded, to drive us into the fangs of despotism: Infinitely preferable would be occasional wars to such an event; the former, although a severe scourge, is transient in its continuance, and in its operation partial, but a small proportion of the community are exposed to its greatest horrors, and yet fewer experience its greatest evils; the latter is permanent and universal misery, without remission or exemption: as passing clouds obscure for a time the splendour of the sun, so do wars interrupt the welfare of mankind; but despotism is a settled gloom that totally extinguishes happiness, not a ray of comfort can penetrate to cheer the dejected mind; the goad of power with unabating rigor insists upon the utmost exaction, like a merciless task master, is continually inflicting the task, and is never satiated with the feast of unfeeling domination, or the most abject servility.

2.7.143 The celebrated Lord Kaims whose disquisitions on human nature evidence extraordinary strength of judgement and depth of investigation, says that a continual *civil* war, which is the most destructive and horrible scene of human discord, is preferable to the uniformity of wretchedness and mis-

ery attendant upon despotism;[76]—of all *possible* evils, as I observed in my first number, *this* is the worst and the most to be *dreaded*.

I congratulate my fellow-citizens that a good government, the greatest earthly blessing, may be so easily obtained, that our circumstances are so favorable that nothing but the folly of the conspirators can produce anarchy or civil war, which would presently terminate in their destruction and the permanent harmony of the state alone, interrupted by their ambitious machinations.

In a former number I stated a charge of a very heinous nature, and highly prejudicial to the public welfare, and at this great crisis peculiarly alarming and threatening to liberty; I mean the suppression of the circulation of the newspapers from state to state by the of——c——rs of the P——t-O——ce, who in violation of their duty and integrity have prostituted their of——ces to forward the nefarious design of enslaving their countrymen, by thus cutting off all communication by the usual vehicle between the patriots of America;—I find that notwithstanding that public appeal, they persevere in this villainous and daring practice. The newspapers of the other states that contain any useful information, are still withheld from the printers of this state, and I see by the annunciation of the Editor of Mr. Greenleaf's patriotic New-York paper, that the printers of that place are still treated in like manner; this informs his readers that but two southern papers have come to hand, and that they contain no information, which he affects to ascribe to the negligence of the p——t boy, not caring to quarrel with the p——t m——t——r g——l.[77] 2.7.144

Centinel.

Philadelphia, January 12, 1788.

XII

To the People of Pennsylvania.

Fellow-Citizens,

Conscious guilt has taken the alarm, thrown out the signal of distress, and even appealed to the generosity of patriotism. The authors and abettors of the new constitution shudder at the term *conspirators* being applied to them, as it designates their true character, and seems prophetic of the catastrophe: they read their fate in the epithet.[78] 2.7.145

In dispair they are weakly endeavouring to screen their criminality by interposing the shield of the virtues of a Washington, in representing his concurrence in the proposed system of government, as evidence of the purity of their intentions; but this impotent attempt to degrade the brightest 2.7.146

ornament of his country to a base level with themselves, will be considered as an aggravation of their treason, and an insult on the good sense of the people, who have too much discernment not to make a just discrimination between the honest mistaken zeal of the patriot and the flagitious machinations of an ambitious junto, and will resent the imposition that Machiavelian arts and consummate cunning have practiced upon our *illustrious chief*.

2.7.147 The term *conspirators* was not, as has been alledged, rashly or inconsiderately adopted; it is the language of dispassionate and deliberate reason, influenced by the purest patriotism: the consideration of the nature and construction of the new constitution naturally suggests the epithet; its justness is strikingly illustrated by the conduct of the patrons of this plan of government, but if any doubt had remained whether this epithet is merited, it is now removed by the very uneasiness it occasions; this is a confirmation of its propriety. Innocence would have nothing to dread from such a stigma, but would triumph over the shafts of malice.

2.7.148 The conduct of men is the best clue to their principles. The system of deception that has been practiced; the constant solicitude shewn to prevent information diffusing its salutary light, are evidence of a conspiracy beyond the arts of sophistry to palliate, or the ingenuity of falsehood to invalidate: the means practised to establish the new constitution are demonstrative of the principles and designs of its authors and abettors.

2.7.149 At the time, says Mr. Martin (deputy from the state of Maryland in the general convention) when the public prints were announcing our perfect unanimity, discord prevailed to such a degree, that the minority were upon the point of appealing to the public against the machinations of ambition.[79] By such a base imposition, repeated in every newspaper and reverberated from one end of the union to the other, was the people lulled into a false confidence, into an implicit reliance upon the wisdom and patriotism of the convention; and when ambition, by her deceptive wiles, had succeeded to usher forth the new system of government with apparent unanimity of sentiment, the public delusion was compleat. The most extravagant fictions were palmed upon the people, the seal of divinity was even ascribed to the new constitution; a felicity more than human was to ensue from its establishment;—overlooking the real cause of our difficulties and burthens, which have their proper remedy, the people were taught that the new constitution would prove a mine of wealth and prosperity equal to every want, or the most sanguine desire; that it would effect what can only be produced by the exertion of industry and the practice of oeconomy.

2.7.150 The conspirators, aware of the danger of delay, that allowing time for a rational investigation would prove fatal to their designs, precipitated the establishment of the new constitution with all possible celerity; in Massachusetts the deputies of that convention, who are to give the final fiat in behalf of that great state to a measure upon which their dearest concerns depend, were elected by express in the first moments of blind enthusiasm;

similar conduct has prevailed in the other states as far as circumstances permitted.

2.7.151 If the foregoing circumstances did not prove a conspiracy, there are others that must strike conviction in the most unsuspicious. Attempts to prevent discussion by shackling the press ought ever to be a signal of alarm to freemen, and considered as an annunciation of meditated tyranny; this is a truth that the uniform experience of mankind has established beyond the possibility of doubt. Bring the conduct of the authors and abettors of the new constitution to this test, let this be the criterion of their criminality, and every patriotic mind must unite in branding them with the stigma of conspirators against the public liberties.—No stage of this business but what has been marked with every exertion of influence and device of ambition to suppress information and intimidate public discussion; the virtue and firmness of some of the printers, rose superior to the menaces of violence, and the lucre of private interest; when every means failed to shackle the press, the free and independent papers were attempted to be demolished by withdrawing all the subscriptions to them within the sphere of the influence of the conspirators; fortunately for the cause of liberty and truth, these daring high-handed attempts have failed except in one instance, where from a peculiarity of circumstances, ambition has triumphed. Under the flimsy pretence of vindicating the character of a contemptible drudge of party rendered ridiculous by his superlative folly in the late convention, of which the statement given in the Pennsylvania Herald, was confessedly a faithful representation, this newspaper has been silenced* by some hundreds of its subscribers (who it seems are generally among the devoted tools of party, or those who are obliged from their thraldom to yield implicit assent to the mandates of the junto) withdrawing their support from it; by this stroke the conspirators have suppressed the publication of the most valuable debates of the late convention, which would have been given in course by the Editor of that paper, whose stipend now ceasing, he cannot afford without compensation the time and attention necessary to this business.

2.7.152 Every patriotic person who had an opportunity of hearing that illustrious advocate of liberty and his country, Mr. Findley, must sensibly regret that his powerful arguments are not to extend beyond the confined walls of the State-House, where they could have so limited an effect; that the United States could not have been his auditory through the medium of the press. I anticipate the answer of the conspirators; they will tell you that this could not be their motive for silencing this paper, as the whole of the debates were taken down in short hand by another person and published, but the public are not to be easily duped, they will not receive a spurious as an equivalent for a genuine production; equal solicitude was expressed for the publication

*The Herald it is said is to be discontinued the 23d instant, (the Editor is already dismissed.)

of the former as for the suppression of the latter—the public will judge of the motives.

2.7.153 That investigation into the nature and construction of the new constitution, which the conspirators have so long and zealously struggled against, has, notwithstanding their partial success, so far taken place as to ascertain the enormity of their criminality. That system which was pompously displayed as the perfection of government, proves upon examination to be the most odious system of tyranny that was ever projected, a many headed hydra of despotism, whose complicated and various evils would be infinitely more oppressive and afflictive than the scourge of any single tyrant: the objects of dominion would be tortured to gratify the calls of ambition and the cravings of power of rival despots contending for the sceptre of superiority; the devoted people would experience a distraction of misery.

2.7.154 No wonder then that such a discovery should excite uneasy apprehensions in the minds of the conspirators, for such an attempt against the public liberties is unprecedented in history, it is a crime of the blackest dye, as it strikes at the happiness of millions and the dignity of human nature, as it was intended to deprive the inhabitants of so large a portion of the globe of the choicest blessing of life and the oppressed of all nations of an asylum.

2.7.155 The explicit language of the Centinel during the empire of delusion was not congenial to the feelings of the people, but truth when it has free scope is all powerful, it enforces conviction in the most prejudiced mind; he foresaw the consequence of an exertion of the good sense and understanding of the people, and predicted the defeat of the measure he ventured to attack, when it was deemed sacred by most men and the certain ruin of any who should dare to lisp a word against it: he has persevered through every discouraging appearance, and has now the satisfaction to find his countrymen are aware of their danger and are taking measures for their security.

2.7.156 Since writing the foregoing, I am informed that the Printer of the Pennsylvania Herald is not quite decided whether he will drop his paper; he wishes, and perhaps will be enabled, to perseverve;—however, the conspirators have effected their purpose; the editor is dismissed and the debates of the convention thereby suppressed.

Centinel.

XIII

To the People of Pennsylvania.

Fellow-Citizens,

2.7.157 The conspirators are putting your good sense, patriotism and spirit to the severest test. So bold a game of deception, so decisive a stroke for despotic power, was never before attempted among enlightened freemen. Can there

be apathy so indifferent as not to be rouzed into indignation, or prejudice so blind, as not to yield to the glaring evidence of a flagitious conspiracy against the public liberties! The audacious and high-handed measures practised to suppress information, and intimidate discussion, would in any other circumstances than the present, have kindled a flame fatal to such daring invaders of our dearest privileges.

The conspirators having been severely galled and checked in their career by the artillery of freedom, have made more vigorous and successful efforts to silence her batteries, while falsehood with all her delusions is making new and greater exertions in favor of ambition. On the one hand, every avenue to information is as far as possible cut off, the usual communication between the states through the medium of the press, is in a great measure destroyed, by a new arrangement at the Post-Office, scarcely a newspaper is suffered to pass† by this conveyance,[80] and the arguments of a Findley, a Whitehill and a Smilie, that bright constellation of patriots are suppressed, and a spurious publication substituted; and on the other hand the select committee are assiduously employed in manufacturing deception in all its ensnaring colours, and having an adequate fund at their command, they are deluging the country with their productions. The only newspaper that circulates extensively out of the city is kept running over with deceptive inventions. Doctor Puff[81] the paragraphist, has scarcely slept since his appointment, having received orders to work double tides; beneath his creative pen thousands of correspondents rise into view, who all harmonize in their sentiments and information about the new-constitution; but the chief reliance is on James the Caledonian,[82] who can to appearance distroy all distinction between liberty and despotism, and make the latter pass for the former, who can bewilder truth in all the mazes of sophistry, and render the plainest propositions problematical—He chameleon-like can vary his appearance at pleasure, and assume any character for the purposes of deception. In the guise of a *Conciliator*, in the Independent Gazetteer, he professes great candour and moderation, admits some of the principal objections to the new constitution to be well founded, and insidiously proposes a method to remove them, which is to consider the first Congress under the new constitution as a convention, competent to supply all defects in the system of government.[83] This is really a discovery that does honor to his invention. What! a legislative declaration or law a basis upon which to rest our dearest liberties. Does he suppose the people have so little penetration as not to see through so flimsy a delusion, that such a security would amount to no more than the will and pleasure of their rulers, who might repeal this *fundamental* sanction whenever ambition stimulated?—in the feigned *character* of a *Freeman*, he combats the weighty arguments of the minority of the late convention, by a meer play upon words, carefully avoiding the real merits of the question,[84] and we moreover trace him in a variety of miscellaneous productions in

2.7.158

†For the truth of this charge I appeal to the Printers.

every shape and form, he occasionally assists Doctor Puff in the fabrication of extracts of letters, paragraphs, correspondents, etc. etc.

2.7.159 So gifted and with such a claim of merit from his extraordinary and unwearied exertions in the cause of despotism, who so suitable or deserving of the office of Chief Justice of the United States. How congenial would such a post be to the principles and disposition of James! Here he would be both Judge and jury, sovereign arbiter in law and equity. In this capacity he may satiate his vengeance on patriotism for the opposition given to his projects of dominion: Here he may gratify his superlative arrogance and contempt of mankind, by trampelling upon his fellow creatures with impunity; here he may give the finishing stroke to liberty, and silence the offensive complaints of violated justice and innocence, by adding the sanction of his office to the rapacity of power and the wantonness of oppression; there will be no intervening jury to shield the innocent, or procure redress to the injured.[85]

2.7.160 Fellow-citizens, although the conspirators and their abettors are not sufficiently numerous to endanger our liberties by an open and forcible attack on them, yet when the characters of which they are composed and the methods they are practising, are considered, it ought to occasion the most serious alarm, and stimulate to an immediate, vigorous and united exertion of the patriotic part of the community for the security of their rights and privileges. Societies ought to be instituted in every county and a reciprocity of sentiments and information maintained between such societies, whereby the patriots throughout Pennsylvania, being mutually enlightened and invigorated, would form an invincible bulwark to liberty, and by unity of council and exertion might the better procure and secure to themselves and to unborn ages the blessings of a good federal government. Nothing but such a system of conduct can frustrate the machinations of an ambitious junto, who, versed in Machiavellian arts, can varnish over with the semblance of freedom the most despotic instrument of government ever projected, who cannot only veil over their own ambitious purposes, but raise an outcry against the real patriots for interested views when they are advocating the cause of liberty and of their country by opposing a scheme of arbitrary power and office-making; who can give the appearance of economy to the introduction of a numerous and permanent standing army and the institution of lucrative, needless offices to provide for the swarms of gaping, almost famished expectants, who have been campaigning it for ten years without success against our inestimable state constitution, as a reward for their persevering toils, but particularly for their zeal on the present occasion, and also as a phalanx to tyranny; and who notwithstanding the testimony of uniform experience evinces the necessity of restrictions on those entrusted with power, and a due dependence of the deputy on the constituent being maintained to ensure the public welfare; who notwithstanding the fate that liberty has ever met from the remissness of the

people and the persevering nature of ambition who ever on the watch, grasps at every avenue to supremacy. I say, notwithstanding such evidence before them of the folly of mankind so often duped by similar arts, the conspirators have had the address to inculcate the opinion that forms of government are no security for the public liberties, that the administration is every thing, that although there would be no responsibility under the new constitution, no restriction on the powers of the government, whose will and pleasure would be literally the law of the land, yet that we should be perfectly safe and happy, that as our rulers would be made of the same corrupt materials as ourselves, they certainly could not abuse the trust reposed in them, but would be the most self denying order of beings ever created; with your purses at their absolute disposal, and your liberties at their discretion, they would be proof against the charms of money and the allurements of power; however, if such Utopian ideas should prove chimerical and the people should find the yoke too heavy, they might at pleasure alleviate or even throw it off. In short, the conspirators have displayed so much ingenuity on this occasion, that if it had not been for the patriotism and firmness of some of the printers, which gave an opportunity to enlightened truth to come forward, and by her invincible powers to detect the sophistry, and expose the fallacy of such impositions, liberty must have been overcome by the wiles of ambition, and this land of freemen have become the miserable abode of slaves.

Centinel.

Philadelphia, January 26, 1788.

XIV

To the People of Pennsylvania.

Fellow-Citizens,

I am happy to find the comment that I have made upon the nature and tendency of the new constitution, and my suspicions of the principles and designs of its authors, are fully confirmed by the evidence of the Honorable Luther Martin, esquire, late deputy in the general convention. He has laid open the conclave, exposed the dark scene within, developed the mystery of the proceedings, and illustrated the machinations of ambition. His public spirit has drawn upon him the rage of the conspirators, for daring to remove the veil of secrecy, and announcing to the public the meditated, gilded mischief: all their powers are exerting for his destruction, the mint of calumny is assiduously engaged in coining scandal to blacken his character, and thereby to invalidate his testimony; but this illustrious patriot will rise 2.7.161

superior to all their low arts, and be the better confirmed in the good opinion and esteem of his fellow-citizens, upon whose gratitude he has an additional claim by standing forth their champion at a crisis when most men would have shrunk from such a duty. Mr. Martin has appealed to general Washington for the truth of what he has advanced, and undaunted by the threats of his and his country's enemies, is nobly persevering in the cause of liberty and mankind. I would earnestly recommend it to all well meaning persons to read his communication, as the most satisfactory and certain method of forming a just opinion on the present momentous question, particularly the three or four last continuances, as they go more upon the general principles and tendency of the new constitution. I have in former numbers alluded to some passages in this publication; I shall in this number quote some few others, referring to the work itself for a more lengthy detail. The following paragraphs are extracted from the continuances republished in the "Independent Gazetteer" of the 25th January, and the "Pennsylvania Packet" of the 1st February instant, viz.

[Here Centinel inserts two extracts from Luther Martin's Genuine Information: the first is 2.4.55 above ("By the eighth section of this article . . . on which the imposts and excises are laid."); the second is 2.4.43–44 above ("But even this provision . . . and they acted accordingly."). The extracts are complete and substantially accurate and are therefore not reprinted here. Centinel concludes:]

2.7.162 After such information, what are we to think of the declarations of Mr. Wilson, who assured our state convention, that it was neither the intention of the authors of the new constitution, nor its tendency to establish a consolidated or national government, founded upon the destruction of the state governments, that such could not have been the design of the general convention he said was certain, because the testimony of experience, the opinions of the most celebrated writers, and the nature of the case demonstrated in the clearest manner, that so extensive a territory as these United States includes, could not be governed by any other mode than a confederacy of republics consistent with the principles of freedom, and that their own conviction was, that nothing short of the supremacy of despotism could connect and bind together this country under ONE GOVERNMENT?[86] Has any one a doubt now remaining of the guilt of the conspirators!

2.7.163 The O——rs of the P——t O——ce, fearful of the consequences of their conduct, are taking measures to invalidate the charge made against them. As this is a matter of the highest importance to the public, it will be necessary to state the charge and the evidence. In two of my former numbers, I asserted that the patriotic newspapers of this city and that of New-York miscarried in their passage, whilst the vehicles of despotism, meaning those newspapers in favor of the new constitution, passed as usual; and it was particularly asserted that the patriotic essays of Brutus, Cincinnatus, Cato, etc. published at New-York, were withheld during the greatest part of the

time that our state convention sat; and in a late number, I further asserted that since the late arrangement at the P——t O——ce, scarcely a newspaper was suffered to pass by the usual conveyance, and for the truth of this last charge I appealed to the printers;[87] however I understand this last is not denied or controverted. When the dependence of the printers on the P——t O——ce is considered, the injury they may sustain by incurring the displeasure of these of——rs, and when to this is added that of the complexion of the printers in respect to the new constitution, that most of them are zealous in promoting its advancement, it can scarcely be expected that they would volunteer it against the P——t O——rs, or refuse their names to a certificate exculpating the of——rs; accordingly we find that most of the printers have signed a certificate that the newspapers arrived as usual prior to the first of January, when the new arrangement took place; however, the printer of the Freeman's Journal when applied to, had the spirit to refuse his name to the establishment of a falsehood, and upon being called upon to specify the missing papers, particularly during the sitting of the state convention, he pointed out and offered to give a list of a considerable number, instancing no less than seven successive Greenleaf's patriotic New-York papers, besides others occasionally with-held from him; Colonel Oswald was out of town when his family was applied to, or I have no doubt he would have observed a similar conduct. But there is a fact that will invalidate any certificate that can be procured on this occasion, and is alone demonstrative of the suppression of the patriotic newspapers. The opponents to the new constitution in this state were anxious to avail themselves of the well-written essays of the New-York patriots, such as Brutus, Cincinnatus, Cato, etc.[88] and with that view were attentive to have them republished here as soon as they came to hand, and especially during the sitting of our state convention, when they would have been the most useful to the cause of liberty by operating on the members of that convention; a recurrence to the free papers of this city at that period, will shew a great chasm in these republications, owing to the miscarriage of Greenleaf's New-York papers; agreeable to my assertions it will appear, that for the greatest part of the time that our state convention sat, scarcely any of the numbers of Brutus, Cincinnatus, Cato, etc. were republished in this city; the fifth number of Cincinnatus that contained very material information about the finances of the union, which strikes at some of the principal arguments in favor of the new constitution, which was published at New-York the 29th November, was not republished here until the 15th December following, two or three days after the convention rose, and so of most of the other numbers of this and the other signatures; so great was the desire of the opponents here to republish them, that the fourth number of Cincinnatus was republished so lately as in Mr. Bailey's last paper, which with other missing numbers were procured by private hands from New-York, and in two or three instances, irregular numbers were republished. The new arrangement at the P——t

O——ce, novel in its nature, and peculiarly injurious by the suppression of information at this great crisis of public affairs, is a circumstance highly presumptive of the truth of the other charge.

Centinel.

XV[89]

To the People of Pennsylvania.

Fellow-Citizens,

2.7.164 There are few of the maxims or opinions we hold, that are the result of our own investigation or observation, and even those we adopt from others are seldom on a conviction of their truth or propriety, but from the facination of example and the influence of what is or appears to be the general sentiment. The science of government being the most abstruse and unobvious of all others, mankind are more liable to be imposed upon by the artful and designing in systems and regulations of government, than on any other subject: hence a jealousy of innovation confirmed by uniform experience prevails in most communities; this reluctance to change, has been found to be the greatest security of free governments, and the principal bulwark of liberty; for the aspiring and ever-restless spirit of ambition would otherwise, by her deceptive wiles and ensnaring glosses, triumph over the freest and most enlightened people. It is the peculiar misfortune of the people of these United States, at this awful crisis of public affairs, to have lost this useful, this absolutely necessary jealousy of innovation in government, and thereby to lie at the mercy and be exposed to all the artifices of ambition, without this usual shield to protect them from imposition. The conspirators, well aware of their advantage, have seized the favorable moment, and by the most unparalleled arts of deception, have obtained the sanction of the conventions of several states to the most tyrannic system of government ever projected.

2.7.165 The magic of great names, the delusion of falsehood, the suppression of information, precipitation and fraud have been the instruments of this partial success, the pillars whereon the structure of tyranny has been so far raised. Those influential vehicles, the newspapers with few exceptions, have been devoted to the cause of despotism, and by the subserviency of the P—— O——, the usefulness of the patriotic newspapers has been confined to the places of their publication, whilst falsehood and deception have had universal circulation, without the opportunity of refutation. The feigned unanimity of one part of America, has been represented to produce the acquiescence of another, and so mutually to impose upon the whole by the force of example.

2.7.166 The adoption of the new constitution by the convention of the state of

Massachusetts, by a majority of nineteen out of near four hundred members, and that too qualified by a number of propositions of amendment, cannot afford the conspirators much cause for triumph, and especially when all the circumstances under which it has been obtained, are considered. The late alarming disorders which distracted that state, and even threatened subversion of all order and government, and were with difficulty suppressed, occasioned the greatest consternation among all men of property and rank: in this disposition even the most high toned and arbitrary government became desirable as a security against licentiousness and agrarian laws; consequently the new constitution was embraced with eagerness by men of these descriptions, who, in every community, form a powerful interest, and added to the conspirators, office-hunters, etc. etc. made a formidable and numerous party in favor of the new constitution. The elections of the members of convention were moreover made in the first moments of blind enthusiasm, when every artifice was practised to prejudice the people against all those who had the enlightened patriotism to oppose this system of tyranny: thus was almost every man of real ability, who was in opposition, excluded from a seat in the convention; consequently the contest was very unequal; well-meaning, though uninformed men, were opposed to great learning, eloquence and sophistry in the shape of lawyers, doctors and divines, who were capable and seemed disposed to delude by deceptive glosses and specious reasoning; indeed, from the specimens we have seen of the discussion on this occasion, every enlightened patriot must regret that the cause of liberty has been so weakly, although jealously advocated, that its champions were so little illuminated. In addition to these numerous advantages in the convention, the friends of the new constitution had the weight and influence of the town of Boston to second their endeavors, and yet, notwithstanding all this, were near losing the question, although delusively qualified. Is this any evidence of the excellency of the new constitution? Certainly not. Nor can it have any influence in inducing the remaining states to accede. They will examine and judge for themselves, and from their wisdom in taking due time for deliberation, I have no doubt will prove the salvation of the liberties of the United States.

Centinel.

Philadelphia, February 20th, 1788.

XVI

To the People of Pennsylvania.

Fellow-Citizens,

The new constitution instead of being the panecea or cure of every grievance so delusively represented by its advocates will be found upon exami- 2.7.167

nation like Pandora's box, replete with every evil. The most specious clauses of this system of ambition and iniquity contain latent mischief, and premeditated villainy. By section 9th of the 1st article, "No *ex post facto* law shall be passed." This sounds very well upon a superficial consideration, and I dare say has been read by most people with approbation. Government undoubtedly ought to avoid retrospective laws as far as may be, as they are generally injurious and fraudulent: Yet there are occasions when such laws are not only just but highly requisite. An ex post facto law is a law made after the fact, so that the Congress under the new constitution are precluded from all controul over transactions prior to its establishment. This prohibition would skreen the numerous public defaulters, as no measure could be constitutionally taken to compel them to render an account and restore the public money; the unaccounted millions lying in their hands would become their private property. Hitherto these characters from their great weight and numbers have had the influence to prevent an investigation of their accounts, but if this constitution be established, they may set the public at defiance, as they would be completely exonerated of all demands of the United States against them. This is not a strained construction of this section, but the proper evident meaning of the words, which not even the ingenuity, or sophistry of the *Caledonian*,[90] can disguise from the meanest capacity. However if this matter admitted of any doubt, it would be removed by the following consideration, viz. that the new constitution is founded upon a dissolution of the present articles of confederation and is an original compact between those states, or rather those individuals who accede to it; consequently all contracts, debts and engagements in favor or against the United States, under the *old* government, are cancelled unless they are provided for in the *new* constitution. The framers of this constitution appear to have been aware of such consequence by stipulating in article 6th, that all debts contracted, and engagements entered into before the adoption of this constitution shall be valid *against* the United States under the new constitution, but there is no provision that the debts, etc. due *to* the United States, shall be valid or recoverable. This is a striking omission, and must have been designed, as debts of the latter description would naturally occur and claim equal attention with the former. This article implied, cancels all debts due to the United States prior to the establishment of the new constitution. If equal provision had been made for the debts due *to* the United States, as *against* the United States, the ex post facto clause would not have so pernicious an operation.

2.7.168 The immaculate convention, that is said to have possessed the fullness of patriotism, wisdom and virtue, contained a number of the principal public defaulters; and these were the most influential members, and chiefly instrumental in the framing of the new constitution: There were several of this description in the deputation from the state of Pennsylvania, who have long standing and immense accounts to settle, and MILLIONS perhaps to refund. The late Financier[91] alone, in the capacity of chairman of the commercial

committee of Congress, early in the late war, was entrusted with millions of public money, which to this day remain unaccounted for, nor has he settled his accounts as Financier. The others may also find it a convenient method to balance accounts with the public; they are sufficiently known and therefore need not be designated—This will account for the zealous attachment of such characters to the new constitution and their dread of investigation and discussion. It may be said that the new Congress would rather break through the constitution than suffer the public to be defrauded of so much treasure, when the burthens and distresses of the people are so very great; but this is not to be expected from the characters of which that Congress would in all probability be composed, if we may judge from the predominant influence and interest these defaulters now possess in many of the states. Besides, should Congress be disposed to violate the fundamental articles of the constitution for the sake of public justice, they would be prevented in so doing by their oaths,* but even if this should not prove an obstacle, if it can be supposed that any set of men would perjure themselves for the public good, and combat an host of enemies on such terms, still it would be of no avail, as there is a further barrier interposed between the public and these defaulters, namely, the supreme court of the union, whose province it would be to determine the constitutionality of any law that may be controverted;[92] and supposing no bribery or corrupt influence practised on the bench of judges, it would be their sworn duty to refuse their sanction to laws made in the face and contrary to the letter and spirit of the constitution, as any law to compel the settlement of accounts and payment of monies depending and due under the old confederation would be. The 1st section of 3d article gives the supreme court cognizance of not only the laws, but of all cases arising under the constitution, which empowers this tribunal to decide upon the construction of the constitution itself in the last resort. This is so extraordinary, so unprecedented an authority, that the intention in vesting of it must have been to put it out of the power of Congress, even by breaking through the constitution, to compel these defaulters to restore the public treasure.

In the present circumstances these sections of the new constitution would be also productive of great injustice between the respective states; the delinquent states would be exonerated from all existing demands against them on account of the great arrearages of former requisitions, as they could not be constitutionally compelled to discharge them. And as the majority of the states are in this predicament, and have an equal voice in the senate, it would be their interest, and in their power by not only the constitution, but 2.7.169

*Article VI. "The senators and representatives before-mentioned and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath to support this constitution." Were ever public defaulters so effectually skreened! Not only the administrators of the general government, but also of the state governments, are prevented by oath from doing justice to the public; and the legislature of Pennsylvania could not without perjury insist upon the delinquent states discharging their arrears.

by a superiority of votes to prevent the levying of such arrearages; besides, the constitution, moreover, declares, that all taxes, etc. shall be uniform throughout the United States; which is an additional obstacle against noticing them.

2.7.170 The state of Pennsylvania in such case would have no credit for her extraordinary exertions and punctuality heretofore; but would be taxed equally with those states which, for years past, have not contributed any thing to the common expences of the union; indeed, some of the states have paid nothing since the revolution.

Centinel.

Philadelphia, 23d February, 1788.

XVII

To the People of Pennsylvania.

Fellow-Citizens,

2.7.171 In my last number I exposed the villainous intention of the framers of the new constitution, to defraud the public out of the millions lying in the hands of individuals by the construction of this system, which would, if established, cancel all debts now due to the United States. I also shewed that thereby the delinquent states would be exonerated of all arrearages due by them on former requisitions of Congress; and to prove that the cancelling of the public dues was premeditated in regard to individuals, I stated that the general convention contained a number of the principal public defaulters, and that these were the most influential members, and chiefly instrumental in framing the new constitution: In answer to which, the conspirators have, by bold assertions, spurious vouchers, and insufficient certificates, endeavoured to exculpate one member, and to alleviate the weight of the charge of delinquency against another. In the face of a resolution of Congress of the 20th June, 1785, declaring their intention of appointing 3 commissioners, to settle and adjust the receipts and expenditures of the late financier; the conspirators have asserted, that his accounts were finally settled in November, 1784, for which they pretend to have vouchers, and by a pompous display of certain resolutions of Congress, respecting a particular charge of fraud against him, as commercial agent to the United States, they vainly hope to divert the public attention from his great delinquency, in never accounting for the millions of public money, entrusted to him in that line. When we consider the immense sums of money taken up by Mr. M[orri]s, as commercial agent, to import military supplies, and even to trade in behalf of the United States, at a time when the risque was so great, that individuals would not venture their property; that all these transactions

were conducted under the private firm of W[illiam Gavett] and M[ereer], which afforded unrestrained scope to peculation and embezzlement of the public property, by enabling Mr. M[orri]s to throw the loss of all captures by the enemy, at that hazardous period, on the public, and converting most of the safe arrivals (which were consequently very valuable) into his private property; and when we add to these considerations, the principles of the MAN, his bankrupt situation at the commencement of the late war, and the immense wealth he has dazzled the world with since, can it be thought unreasonable to conclude, that the principal source of his affluence was the commercial agency of the United States, during the war, not that I would derogate from his successful ingenuity in his numerous speculations in the paper monies, Havannah monopoly and job, or in the sphere of financiering.[93]

The certificate published in behalf of general M[i]ffl[i]n, the quarter master gen[era]l, will not satisfy a discerning public, or acquit him of the charge of delinquency, as this certificate was procured to serve an electioneering purpose, upon a superficial and hasty inspection of his general account, unchecked by the accounts of his deputies, whose receipts and expenditures had not been examined, and consequently, by errors, collusion between him and them, or otherside g[enera]l M[i]ffl[i]n may retain a large balance in his hands; in such case a *quietus* may have been thought expedient to continue his affluence. 2.7.172

For the honor of human nature, I wish to draw a veil over the situation and conduct of another weighty character, whose name has given a false lustre to the new constitution, and been the occasion of sullying the laurels of a *Washington*, by inducing him to acquiesce in a system of despotism and villainy, at which enlightened patriotism shudders. 2.7.173

The discovery of the intended fraud, which for magnitude and audacity, is unparalelled, must open the eyes of the deluded to the true character and principles of the men who had assumed the garb of patriotism, with an insidious design of enslaving and robbing their fellow-citizens—of establishing those odious distinctions between the well born and the great body of the people, of degrading the latter to the level of slaves, and elevating the former to the rank of nobility. 2.7.174

The citizens of this state, which is in advance in its payments to the federal treasury, whilst some of the others have not paid a farthing since the war, ought in a peculiar manner to resent the intended imposition, and make its authors experience their just resentment; it is incumbent upon them in a particular manner, to exert themselves to frustrate the measures of the conspirators, and set an example to those parts of the union, who have not enjoyed the blessing of a free press on this occasion, but are still enveloped in the darkness of delusion, and enthralled by the fascination of names. 2.7.175

Could it have been supposed seven years ago, that, before the wounds received in the late conflict for liberty were scarcely healed, a post master-general and his deputies would have had the daring presumption to convert 2.7.176

an establishment intended to promote and secure the public welfare into an engine of despotism, by suppressing all those newspapers that contain the essays of patriotism and real intelligence, and propagating instead thereof falsehoods and delusion? Such a supposition at that time, would have been treated as chimerical; but how must our indignation rise when we find this flagitious practice is persevered in, after being publicly detected! Must not the bribe from the conspirators be very great to compensate the post master-general and his deputies, for the loss of character and infamy consequent upon such conduct, and for the danger they incur of being impeached and turned out of office?

2.7.177 The scurrilous attack of the *little Fiddler* upon Mr. Workman of the university, on a suspicion, perhaps unfounded, of his being the author of a series of essays under the signature of *Philadelphiensis*, is characteristical of the man;[94] he has ever been the base parasite and tool of the wealthy and great, at the expence of truth, honor, friendship, treachery to benefactors, nay to the nearest relatives; all have been sacrificed by him at the shrine of the great: he ought however, to have avoided a contrast with so worthy and highly respected a character as Mr. Workman, who had an equal right with himself to offer his sentiments on the new constitution; and if he viewed it as a system of despotism, and had talents to unfold its nature and tendency, he deserves the thanks of every patriotic American, if he has exerted them under the character of Philadelphiensis.—His not being above four years in the country can be no objection; the celebrated Thomas Paine wrote his Common Sense before he had been two years in America, which was not the less useful or acceptable upon that account. The public have nothing to do with the author of a piece; it is the merits of the writing that are alone to be considered.—Mr. Workman, prior to his coming to America, was a professor in an eminent academy in Dublin.—Little Francis should have been cautious in giving provocation, for insignificance alone could have preserved him the smallest remnant of character; I hope he will take the hint, or such a scene will be laid open as will disgrace even his patrons; the suit of claths, and the quarter cask of wine, will not be forgot.

Centinel.

Philadelphia, March 19th, 1788.

XVIII

To the People of Pennsylvania.

Fellow-Citizens,

2.7.178 The measures that are pursuing to effect the establishment of the new constitution, are so repugnant to truth, honor, and the well-being of society,

as would disgrace any cause. If the nature and tendency of this system were to be judged of by the conduct of its framers and patrons, what a picture of ambition and villainy would present itself to our view! From the specimens they have already given, anticipation may easily realise the consequences that would flow from the new constitution, if established; [we] may bid adieu to all the blessings of liberty, to all the fruits of the late glorious assertion of the rights of human nature, made at the expence of so much blood and treasure. Yet such is the infatuation of many well meaning persons, that they view with indifference the attrocious villainy which characterises the proceedings of the advocates of the new system: The daring, and in most parts of the United States, the successful methods practised to shackle the press, and destroy the freedom of discussion; the silencing the Pennsylvania Herald, to prevent the publication of the invaluable debates of the late convention of this state; the total suppression of real intelligence, and of the illuminations of patriotism through the medium of the post-office; the systematic fraud and deception that pervade the union; the stigmatising, and by every art which ambition and malice can suggest, labouring to villify, intimidate and trample under foot every disinterested patriot, who preferring his country's good to every other consideration, has the courage to stand forth the champion of liberty and the people; and the intercepting of private confidential letters passing from man to man, violating the sacredness of a seal, and thus infringing one of the first privileges of freemen—that of communicating with each other:[95] I say all these are overlooked by the infatuated admirers of the new system, who, deluded by the *phantom* of wealth and prosperity, profit not by the admonitory lesson which such proceedings afford, are deaf to the calls of patriotism, and would rush blindly into the noose of ambition.

However, to the honor of Pennsylvania, a very large majority of her 2.7.179
citizens view the subject in its true light, and spurn the shackles prepared for them. They will in due time convince the aspiring despots and avaricious office-hunters, that their dark intrigues, and deep concerted schemes of power and aggrandisement, are ineffectual, that they are neither to be duped nor dragooned out of their liberties. The conspirators, I know, insolently boast that their strength in the other states will enable them to crush the opposition in this; but let them not build upon that which is in its nature precarious and transient, which must fail them the moment the delusion is dispelled: Their success in the other states is the fruit of deceptions that cannot be long supported. Indeed the audacity and villainy of the conspirators on the one hand, and the frantic enthusiasm, and easy credulity of the people on the other, in some of the states, however well attested and recorded in the faithful page of history, will be treated by posterity as fabulous.

The great artifice that is played off on this occasion, is the persuading the 2.7.180
people of one place, that the people every where else are nearly unanimous in favor of the new system, and thus endeavouring by the fascination of

example and force of general opinion to prevail upon the people every where to acquiesce in what is represented to them as the general sentiment.

2.7.181 Thus as one means of deception has failed them, they have adopted another, always avoiding rational discussion. When the glare of great names, the dread of annihilation if the new system was rejected, or the adoption of it even delayed, were dissipated by the artillery of truth and reason; they have recurred to the one now practising, the intimidating and imposing influence of imaginary numbers and unanimity that are continually reverberated from every part of the union, by the tools and vehicles of the would-be despots; and in which they have had astonishing success. The people in the Eastern states have been taught to believe that it is all harmony to the Southward; and in the Southern states they are discouraged from opposition by the unanimity of the Eastern and Northern states; nay, what will appear incredible, considering the distance, a gentleman of veracity just returned from New-York, assures that the conspirators have had the address to inculcate an opinion there that all opposition had ceased in this state, notwithstanding the evidence of the contrary is so glaring here; this gentleman further informs, that so entirely devoted is the post-office, that not a single newspaper is received by the printers of that place from this city or elsewhere; and a Boston newspaper come by private hand, announces [to] the public, that for some months past, the printers there have received no newspapers to the Southward of New-Haven, in Connecticut, where the press is muzzled, and consequently, cannot injure the cause; that all intelligence of the occurrences in the other states is withheld from them; and that they know more of the state of Europe, than of their own country.

2.7.182 Notwithstanding many thousand copies of the Reasons of Dissent of the minority of the late convention of this state were printed and forwarded in every direction, and by various conveyances, scarcely any of these got beyond the limits of this state, and most of them not until a long time after their publication.[96] The printer of these Reasons, by particular desire, addressed a copy of them to every printer in the union, which he sent to the Post-office to be conveyed in the mail as usual, long before the *new arrangement*, as it is called, took place; and yet we since find that none of them reached the place of their destination. This is a full demonstration of the subserviency of the Post-Office, and a striking evidence of the vigilance that has been exerted to suppress information. It is greatly to be regretted that the opposition in Massachusetts were denied the benefits of our discussion, that the unanswerable dissent of our minority did not reach Boston in time to influence the decision of the great question by their convention, as it would in all probability have enabled patriotism to triumph; not that I would derogate from the good sense and public spirit of that state, which I have no doubt would in common circumstances have shone with equal splendor, but this was far from being the case; the new constitution was viewed in Massachusetts through the medium of a SHAYS, the terrors of HIS insurrection

had not subsided; a government that would have been execrated at another time was embraced by many as a refuge from anarchy, and thus liberty deformed by mad riot and dissention, lost her ablest advocates.

2.7.183 As the liberties of all the states in the union are struck at in common with those of Pennsylvania, by the conduct of the Post-Master General and deputies, I trust that the example which her Legislature* has set by instructing her delegates in Congress on this subject, will be followed by the others, that with one accord they will hurl their vengeance on the venal instruments of ambition, who have presumed to prostrate one of the principal bulwarks of liberty. In a confederated government of such extent as the United States, the freest communication of sentiment and information should be maintained, as the liberties, happiness and welfare of the union depend upon a concert of counsels; the signals of alarm whenever ambition should rear its baneful head, ought to be uniform: without this communication between the members of the confederacy the freedom of the press, if it could be maintained in so severed a situation, would cease to be a security against the encroachments of tyranny. The truth of the foregoing position is strikingly illustrated on the present occasion; for want of this intercommunity of sentiment and information, the liberties of this country are brought to an awful crisis; ambition has made a great stride towards dominion; has succeeded thro' the medium of muzzled presses to delude a great body of the people in the other states, and threatens to overwhelm the enlightened opposition in this by *external* force. Here, indeed, notwithstanding every nerve was strained, by the conspirators, to muzzle or demolish every newspaper that allowed free discussion, two printers have asserted the independency of the press,[97] whereby the arts of ambition have been detected, and the new system has been pourtrayed in its native villainy; its advocates have long since abandoned the field of argument, relinquished the unequal contest, and truth and patriotism reigns triumphant in this state; but the conspirators trust to their success in the other states for the attainment of their darling object, and therefore all their vigilance is exerted to prevent the infectious spirit of freedom and enlightened patriotism communicating to the rest of the union—all intercourse is as far as possible cut off.

2.7.184 To rectify the erroneous representation made in the other states of the sentiments of the people in this respecting the new constitution, I think it my duty to state the fact as it really is:—Those who favor this system of tyranny are most numerous in the city of Philadelphia, where, perhaps, they may be a considerable majority; in the most eastern counties they compose about one-fourth of the people, but in the middle, northern and western counties not above a twentieth part; so that upon the whole the friends to the new constitution in this state are about one-sixth of the people. The following

*The application to Congress from our Legislature, was made upon the complaint of all the printers of newspapers in the city of Philadelphia.

circumstance is an evidence of the spirit and decision of the opposition:—An individual unadvisedly and without concert, and contrary to the system of conduct generally agreed upon, went to the expence of printing and circulating an address to the Legislature, reprobating in the strongest terms the new constitution, and praying that the deputies of this state in the federal Convention, who in violation of their duty acceeded to the new constitution, be called to account for their daring procedure; this address or petition was signed by upwards of four thousand citizens in only two counties, viz. Franklin and Cumberland, and if the time had admitted, prior to the adjournment of the Legislature, there is reason to believe that this high-toned application would have been subscribed by five-sixth of the freemen of this state.[98] The advocates of the new constitution, availing themselves of this partial measure of two counties, have asserted it to be the result of a general exertion, which is so evidently false that it can only deceive people at a distance from us, for the counties over the mountain are nearly unanimous in the opposition; in Fayette at a numerous county meeting, there appeared to be but two persons in favor of the constitution; in Bedford county in the mountains, there are not above twenty; in Huntingdon adjoining, about 30; in Dauphin, in the middle country, not 100; in Berks, a large eastern county that has near 5000 taxable inhabitants, not more than 50, and so of several others, and yet no petitions were circulated or signed in those counties.—The system of conduct alluded to is the forming societies in every county in the state, who have committees of correspondence; these are now engaged in planning a uniform exertion to emancipate this state from the thraldom of despotism; a convention of deputies from every district will in all probability be agreed upon, as the most eligible mode of combining the strength of the opposition, which is increasing daily both in numbers and spirit.

2.7.185 The Centinel, supported by the dignity of the cause he advocates, and sensible that his well-meant endeavors have met the approbation of the community, views with ineffable contempt the impotent efforts of disappointed ambition to depreciate his merit and stigmatize his performances, and without pretending to the spirit of divination, he thinks he may predict that the period is not far distant when the authors and *wilful* abettors of the new constitution will be viewed with detestation by every good man, whilst the Centinels of the present day will be honored with the esteem and confidence of a grateful people.

2.7.186 Great pains have been taken to discover the author of these papers, with a view, no doubt, to villify his private character, and thereby lessen the usefulness of his writings, and many suppose they have made the discovery, but in this they are mistaken. The Centinel submits his performances to the public judgement, and challenges fair argumentation; the information he has given from time to time, has stood the test of the severest scrutiny, and thus his reputation as a writer, is established beyond the injury of his enemies. If

it were in the least material to the argument, or answered any one good purpose, he would not hesitate a moment in using his own signature; as it would not, but on the contrary, point where the shafts of malice could be levelled with most effect, and thus divert the public attention from the proper object, to a personal altercation, he from the first determined that the prying eye of party or curiosity, should never be gratified with his real name, and to that end to be the sole depository of the secret. He has been thus explicit to prevent the repetition of the weakness of declaring off, when charged with being the author, and to put the matter upon its true footing; however, it may flatter his vanity, that these papers should be ascribed to an illustrious patriot, whose public spirit and undaunted firmness of mind, eclipse the most shining ornaments of the Roman commonwealth, in its greatest purity and glory, whose persevering exertions for the public welfare, have endeared him to his country,[99] whilst it has made every knave and aspiring despot, his inveterate enemy, and who has never condescended to deny any writings that have been ascribed to him, or to notice the railings of party.

Centinel.

Philadelphia, April 5th, 1788.

1. Pennsylvania Constitution of 1776, Declaration of Rights, arts. 10, 11, 12.

2. Centinel goes further here in his criticism of Washington and Franklin than most Anti-Federalists thought prudent, and he was strongly criticized on this account. Cf. A Federalist, in the Philadelphia *Independent Gazetteer*, 25 October 1787 (McMaster and Stone 168). Resisting the weight of these venerable statesmen provided one of the Anti-Federalists' major rhetorical problems. The following Federalist appeal, exaggerated in style but characteristic in substance, was made by One of the Four Thousand, writing in the *Independent Gazetteer* 15 October 1787 (McMaster and Stone 117–18): "Freemen of Pennsylvania, consider the character and services of the men who made this government. Behold the venerable FRANKLIN, in the 70th year of his age, cooped up in the cabin of a small vessel, and exposing himself to the dangers of a passage on the ocean, crowded with British cruisers, in a winter month, in order to solicit from the court of France that aid, which finally enabled America to close the war with so much success and glory—and then say, is it possible that this man would set his hand to a constitution that would endanger your liberties? From this aged servant of the public, turn your eyes to the illustrious American hero, whose name has ennobled human nature—I mean our beloved WASHINGTON. Behold him, in the year 1775, taking leave of his happy family and peaceful retreat, and flying to the relief of a distant, and at that time an unknown part of the American continent. See him uniting and cementing an army, composed of the citizens of thirteen states, into a band of brothers. Follow him into the field of battle, and behold him the *first* in danger, and the *last* out of it. Follow him into his winter quarters, and see him sharing in the hunger, cold and fatigues of every soldier in his army. Behold his fortitude in adversity, his moderation in victory, and his tenderness and respect upon all occasions for the civil power of his country. But above all, turn your eyes to that illustrious scene he exhibited at Annapolis in 1782, when he resigned his commission, and laid his sword at the feet of Congress, and afterwards resumed the toils of an American farmer on the banks of the Potomac. Survey, my countrymen, these illustrious exploits of patriotism and virtue, and then say, is it possible that the deliverer of our country would have recommended an unsafe form of government for that liberty, for which he had for eight long years contended with such unexampled firmness, con-

stancy and magnanimity." For other Federalists who stress the respectability of the framers, and particularly Washington and Franklin, see McMaster and Stone 117, 129, 136, 168; Ford, *Essays* 23, 26; Ford, *Pamphlets* 64, 74, 221, 245–47. See Federal Republican 3.6.5 n. 4. The Anti-Federalists frequently shared their opponents' high opinion of the framers. The Federal Farmer (V, 2.8.62) thought that "America probably never will be an assembly of men of a like number, more respectable." There were, however, frequent criticisms. See Martin 2.4.13, 19–20; Cato I, 2.6.5–6; Brutus I, 2.9.1–3; Old Whig VII, 3.3.41–42; Aristocrotis 3.16.1–3; Yeomanry of Massachusetts 4.19.1–3; American 4.20.1–3; Countryman from Dutchess County 6.6.2–4.

3. John Adams, *Defence of the Constitutions of Government of the United States*. The first volume of the *Defence* was published in England in 1787, arriving in the United States "in the midst of the agitation caused by the assembling of the convention to form the federal constitution." Editorial note, John Adams, *Works* IV, 275–76. Two more volumes of the *Defence* followed in 1788.

4. See the "Preface" of the first volume of Adams' *Defence (Works* IV, 283ff.); Letters V, XXIII (ibid. 284, 322, 380–82); Conclusion (ibid. 579 ff.); and *Thoughts on Government* (1776) (ibid. 193 ff.). While some Anti-Federalists join *Centinel* in his opposition to balanced government (see Brutus XVI, 2.9.202; [Maryland] Farmer V, 5.1.71–72; Lowndes 5.12.4; Impartial Examiner 5.14.35–40; Republicus 5.13.7; Monroe 5.21.19–28), others display views very similar to Adams' (see *Federal Farmer* VII, 2.8.97 n. 60). Note that Centinel, while opposing a balancing of orders, emphatically supports the principle of separation of powers. See II, 2.7.50 and n. 29.

5. A Federalist writer replied: "The Centinel asserts, that responsibility in the rulers is the best security the people can have of their rights. Now were this true, every discerning person will see that there is as great a responsibility in this plan as if all the powers of government were blended in one body of men. But the assertion is false. Interest is the greatest tie that one man can have on another, I mean taking mankind in general. And for the truth of this I appeal to your own experience and observation. The thief, the robber knows that he is responsible to the state, and in danger of the halter or the wheel-barrow, yet this does not influence his conduct; but convince him in any particular instance that it is more for his interest to forbear this practice, and he will, for that time, be honest. According to the proposed plan, the interest of the rulers and the ruled are the same; they never can be separated, for they are all one mass, having no difference of rights or privileges; or, as I said before, it is the people governing themselves; and therefore their rights will be secure." A Citizen, *Carlisle* [Pennsylvania] *Gazette* 24 October 1787.

6. The argument in this section is repeated and somewhat elaborated in V, 2.7.96. Cf. also II, 2.7.40.

7. See Cato III, 2.6.16 n. 11.

8. See [Gordon and Trenchard], *Cato's Letters* III, no. 71: "In Turky, Printing is forbid, lest by its Means common Sense might get the better of Violence, and be too hard for the Imperial Butcher."

9. Shakespeare, *Julius Caesar* act 3, sc. 2.

10. This is the only essay of the series that did not appear in the *Independent Gazetteer*.

11. Montesquieu, *The Spirit of Laws* XIV, ch. 13.

12. Montesquieu, *Considerations on the Causes of the Greatness of the Romans and Their Decline* ch. 9, "Two Causes of Rome's Ruin."

13. John Dickinson, *Letters from a Farmer in Pennsylvania* (1767) X; reprinted in *Empire and Nation*, ed. Forrest McDonald (Englewood Cliffs, N.J., 1962).

14. Although numerous lengthy speeches by Wilson defending the Constitution in the Pennsylvania convention were published by Thomas Lloyd in 1788—and indeed constituted almost the whole of Lloyd's publication (and Elliot's republication) of the Pennsylvania debates—the piece referred to here was a speech delivered to a meeting of the citizens of Philadelphia on 6 October 1787. The substance of this speech was published in the *Pennsylvania Packet* 10 October 1787, from which it is reprinted by McMaster and Stone 143–49. It was also printed in a separate pamphlet, along with the Examination of an American Citizen (Tench Coxe), from which it is taken by

Ford, *Pamphlets* 155–61. Several lines were inadvertently omitted from the Ford republication (at 159 middle), and the McMaster and Stone version is therefore preferable. This speech was one of the most widely known Federalist statements and was answered by numerous Anti-Federalist writers. For a full version of the Pennsylvania debates and an explanation of the way these debates were published, see McMaster and Stone 211–431.

15. McMaster and Stone 146.

16. Ibid. 147. This argument was widespread. See ibid. 147, 264 (Wilson), 171 (A Federalist); Ford, *Essays* 153–54 (A Landholder); Elliot II, 64 (Sumner), 201 (Law), 202 (Wolcott); Elliot III, 96 (Madison), 301 (Pendleton); Elliot IV, 180–81 (Maclaine).

17. See McMaster and Stone 144.

18. While Centinel dates the Articles of Confederation in 1778, they did not come into force until 1781.

19. McMaster and Stone 143.

20. Regarding the omission of a provision for juries in civil cases, Wilson argued that state practice varied too much to permit a general rule. "Besides it is not in all causes that the trial by jury is adopted in civil questions: for causes depending in courts of admiralty, such as relate to maritime captures, and such as are agitated in the courts of equity, do not require the intervention of that tribunal." Ibid. 145. See Federal Farmer II, 2.8.9 n. 16.

21. I have not found any Federalist who makes this exact argument. See Ford, *Pamphlets* 149 (An American Citizen), 239 (Aristides); Ford, *Essays* 159 (A Landholder).

22. The Constitution does not extend federal judicial power to controversies between a state and citizens of that state. Art. III, sec. 2. See Agrippa V, 4.6.20.

23. See above, n. 20.

24. William Blackstone, *Commentaries on the Laws of England* III, 379–80. Centinel paraphrases or omits several sentences, including this one, after the reference to the few and the many: "On the other hand, if the power of the judicature were placed at random in the hands of the multitude, their decisions would be wild and capricious, and a new rule of action would be every day established in our courts."

25. For a description of this case and references to the primary materials, see Julius Goebel, Jr., and T. Raymond Naughton, *Law Enforcement in Colonial New York* (New York 1944) 235 and n. 47.

26. McMaster and Stone 145. See Brutus VIII, 2.9.97 n. 67.

27. McMaster and Stone 146.

28. See above, I, 2.7.10.

29. *The Spirit of Laws* XI, ch. 6. Cf. above, I, 2.7.6. The Anti-Federalists generally insisted on the necessity of a separation of powers. See Mason 2.2.7–8; Brutus XVI, 2.9.197; Federal Farmer VI, 2.8.86; XIV, 2.8.175; Old Whig V, 3.3.31; Officer of the Late Continental Army 3.8.3; DeWitt 4.3.12–14; Agrippa XVI, 4.6.73; Brutus [Virginia] 5.15.1; Henry 5.16.7, 14; Cincinnatus IV, 6.1.26–32; Plebeian 6.11.16. But see Penn 3.12.16–17; Watchman 4.22.4. Cf. above, n. 4.

30. McMaster and Stone 147–48. See Aristides, "Remarks," Ford, *Pamphlets* 253; cf. Federal Farmer III, 2.8.38; XVII 2.8.209; Old Whig VI, 3.3.33; Federal Republican 3.6.17. It may be noted that Publius does not attempt thus to sweeten the pill and agrees with the critics that "taking into the account the existing debt, foreign and domestic, upon any plan of extinguishment which a man moderately impressed with the importance of public justice and public credit could approve, in addition to the establishments, which all parties will acknowledge to be necessary, we could not reasonably flatter ourselves that this resource alone, upon the most improved scale, would even suffice for its present necessities." *The Federalist* no. 30, 190.

31. On poll taxes, see Cato VI, 2.6.42 and n. 29.

32. McMaster and Stone 149.

33. Ibid. 148–49: "All the officers of government, and all the appointments for the administration of justice and the collection of the public revenue, which are transferred from the individual to the aggregate sovereignty of the States, will necessarily turn the stream of influence and emolument into a new channel. Every person,

therefore, who either enjoys or expects to enjoy a place of profit under the present establishment, will object to the proposed innovation; not, in truth, because it is injurious to the liberties of the country, but because it affects his schemes of wealth and consequence." For other examples of this common argument see above, Martin 2.4.118 n. 44. Both sides could of course play this game. See Centinel XIII, 2.7.159 and n. 85.

34. This essay was first published in the *Independent Gazetteer* 8 November 1787 (from which it is taken by McMaster and Stone in their reprinting of Centinel); but it was, according to the author, very inaccurately printed. A version corrected by the author was published in the *Freeman's Journal* 14 November 1787, and is the one reprinted here.

35. Machiavelli, *Discourses* I, ch. 25.

36. See Farrand II, 583–84, 666–67.

37. See Pennsylvania Convention Minority (3.11).

38. *The Spirit of Laws* II, ch. 2.

39. Pennsylvania Constitution 1776, Declaration of Rights, sec. VIII.

40. See Brutus I, 2.9.10–21. Centinel refers to the reprinting of the first number of Brutus in the *Pennsylvania Packet and Daily Advertiser* 26 October 1787.

41. Centinel IV and a couple of paragraphs from Centinel II were later reprinted, substantially in their original form, in the *Freeman's Journal* 26 March 1788 and 2 April 1788, under the title "The Real Federalist" and signed by Deliberator.

42. See McMaster and Stone 238–48. See also Pennsylvania Convention Minority (3.11).

43. See above, I, 2.7.26. See One of the Four Thousand and A Pennsylvania Farmer in McMaster and Stone 118, 127–28. For other examples of this very common Federalist theme, see Ford, *Essays* 141–42, 149, 402–4; Ford, *Pamphlets* 55, 70–73; *The Federalist* no. 15, 91–92. On Anti-Federalist views of conditions, see Plebeian 6.11.5 n. 6.

44. See above, n. 2. The main references to Federalist discussions of the framers are collected below, Federal Republican 3.6.5 n. 4.

45. See above, n. 43. "There are critical periods in the fate of nations, as well as in the life of man, which are not to be neglected with impunity. I am much mistaken if this is not such a one with us. When we were at the very brink of despair, the late excellent Convention with a unanimity that none could have hoped for, generously discarding all little considerations formed a system of government which I am convinced can stand the nicest examination, if reason and not prejudice is employed in viewing it." Marcus [James Iredell], Ford, *Pamphlets* 369. For other examples, see Ford, *Essays* 191; McMaster and Stone 228; *The Federalist* no. 37; *Virginia Independent Chronicle* 31 October 1787, 14 November 1787 (A True Friend); ibid., 5 December 1787 (Americanus); ibid., 13 February 1788 (A Planter); *Gazette of the State of Georgia* 20 March 1788 (William Pierce to St. George Tucker); *Massachusetts Centinel* 13 October 1787. Anti-Federalists widely conceded that this was a critical period (see Federal Farmer I, 2.8.1 n. 4), while denying that circumstances were as bad as they painted them (see Plebeian 6.11.5 n. 6).

46. See Ford, *Pamphlets* 83, 191; Cato II, 2.6.8 n. 4.

47. See for examples, McMaster and Stone 96, 436, 484, 521–23; Ford, *Pamphlets* 78–83, 123; *The Federalist* no. 38.

48. Centinel's quotations are taken from a pamphlet version of the speech, published by Thomas Bradford, and reprinted in McMaster and Stone 217–31. (Exactly the same portions of the speech are quoted by the Pennsylvania Convention Minority; see 3.11.17.) The version of this speech printed in Elliot II, 418–34, is taken from Thomas Lloyd's report of the Pennsylvania debates and is misdated by Elliot as 26 November. See Federal Farmer XVII, 2.8.204 n. 123.

49. See particularly above, I, 2.7.11–16.

50. See above, n. 6.

51. See above, II, 2.7.41–46.

52. The original reads: ". . . the foregoing sections gives. . . ." On the "pursuant" clause, see Pennsylvania Convention Minority 3.11.22 and n. 11.

53. See above, n. 18.
54. McMaster and Stone 147.
55. Pennsylvania Convention, 28 November, ibid. 265–66; Elliot II, 440–41.
56. See VI, 2.7.105–8. On the subject of good administration see Federal Farmer I, 2.8.1 n. 3; Poplicola 4.11 passim.
57. Cf. Wilson's remarks on 1 December, McMaster and Stone 307.
58. Alexander Pope, *Essay on Man,* Epistle 2.
59. The Pennsylvania ratifying convention had concluded its deliberations on 15 December. The Address of the Minority of the Pennsylvania Convention had been published on 18 December in the *Pennsylvania Packet and Daily Advertiser* (see 3.11 intro.). By this time most of the major Pennsylvania Anti-Federalist pieces had been published or were in the course of publication, such as the Old Whig, the Democratic Federalist, An Officer of the Continental Army, and Philadelphiensis. Pennsylvanians had also had the opportunity to read such out-of-state authors as Cato, Federal Farmer, Brutus, Cincinnatus, Gerry, Mason, and Agrippa.
60. The quotation is not from Montesquieu but from John Dickinson, as Centinel correctly notes above; II, 2.7.33 n. 13.
61. *The Spirit of Laws* XIV, ch. 13.
62. *British Liberties; or, The Free-born Subject's Inheritance, Containing the Laws that Form the Basis of Those Liberties, with Observations Thereon . . .* (London 1766) 184–85.
63. On judicial review, see XVI, 2.7.168 and n. 92.
64. Robert Morris.
65. James Wilson.
66. See McMaster and Stone 483 ff.
67. Greenleaf's newspaper was the *New York Journal,* which was published in daily and weekly editions. See introductions to Cato (2.6), Brutus (2.9), and Cincinnatus (6.1).
68. This question is taken up again in several subsequent papers. See XI, 2.7.144; XII, 2.7.150–56; XIII, 2.7.157–58; XIV, 2.7.163; XV, 2.7.165; XII, 2.7.176–83. There appears in fact to have been no "new arrangement" of postal service, although there was a good deal of confusion and suspicion. The postmaster general, Ebenezar Hazard, defended himself by explaining that the arrangements for carrying newspapers, which were not strictly part of the mail, remained unchanged. The specific issue concerned the free carriage of newspapers exchanged between printers, which was entirely a matter of private arrangement between the carriers and the printers and not the responsibility of the postmaster general. Some of the carriers appear to have declined to take the printers' copies, which the Anti-Federal printers regarded as contrary to an established custom or right. There may have been political motives in some individual cases. It may also have been that some of the postriders, whose use Hazard promoted in favor of stages—the source of the "new arrangements" charge?—found the transportation of the newspapers a greater burden than the stages had and consequently refused to carry them. Yet Hazard said, in a private letter, that "it was while the stages carried the mail that 'Centinel' complained." The evidence suggests a primitive postal service rather than conspiracy. There were some interruptions in the exchange between printers of certain Anti-Federal newspapers at this time; but there is no evidence that it was serious or extensive or that it had its source in any instruction from the postmaster general. The Anti-Federalist essays were in fact widely and rather quickly distributed throughout the country. Following this controversy, the Congress provided that the printers should have the right to a free exchange of their papers by means of the public mail. While there is no adequate account of this matter in the secondary literature, there are discussions of it in McMaster and Stone 24, 529–31; Rutland, *The Ordeal of the Constitution,* 62, 128–34; and Wesley Everett Rich, *History of the United States Post Office to the Year 1829* (Cambridge 1924) 29–67. The main primary sources are *Papers of the Continental Congress* no. 61, 607–10, 567–68, 413, and passim; *Journals of the Continental Congress* XXXII, 55; XXXIII, 670–79; XXXIV, 144; Massachusetts Historical Society *Collections,* series 5, III, 23–45, 66–68; *Proceedings and Debates of the General*

Assembly of Pennsylvania (Philadelphia 1788) III, 198, 232–35; Washington, *Writings* XXX, 15–18; *New York Journal*, and Philadelphia *Independent Gazetteer*, January–April 1788.

69. The *Independent Gazetteer*, 9 January 1788, contains a reply to this charge, asserting that what the Major said was, "that I would rather see five thousand rascals who might wish to disturb the peace and happiness of America, perish by the rope, than that the sword of civil war should be drawn."

70. The references are of course to James Wilson, Robert Morris, and Gouverneur Morris.

71. From the *Independent Gazetteer* 16 January 1788, incorporating errata printed on 5 February 1788.

72. Luther Martin, Genuine Information; see above, 2.4.11–37.

73. See above, IV, 2.7.91 and nn. 43, 45.

74. " Anarchy, with her haggard cheeks and extended jaws, stands ready and all allow that unless some efficient form of government is adopted she will soon swallow us." Cassius [James Sullivan], Ford, *Essays* 15, 18. See *The Federalist* nos. 16 ff; McMaster and Stone 225–26 (Wilson), 93 (P. Webster), 118, 120–23, 127–28, 138, 298; Ford, *Pamphlets* 84 (A Citizen of New York), 269 (E. Randolph), 248–49 (Aristides); Ford, *Essays* 15 (Cassius), 179–80 (Landholder), 405–6 (Williamson). See above, n. 47.

75. See *The Federalist* no. 1, 7; no. 2, 12–13; nos. 6–7; no. 60, 409. For other Federalist warnings against separate confederacies, see Ford, *Pamphlets* 81–82 (A Citizen of New York), 248–49 (Aristides), 269–70 (E. Randolph); McMaster and Stone 225–26 (Wilson). See also An Old State Soldier, *Virginia Independent Chronicle* 6 February 1788; James McClurg to James Madison, 5 August 1787, *Proceedings of the Massachusetts Historical Society* 2d series, XVII (1903), 471; An American, *Virginia Independent Chronicle* 4 June 1788; A Federalist, *Country Journal and the Poughkeepsie Advertiser* 22 April 1788; A Dutchess County Farmer, ibid. 26 February 1788; and the essay ostensibly written by a group of Dutchess county Anti-Federalists and replies, ibid. 4 March, 11 March, 18 March 1788. For allegations that Patrick Henry favored separate confederacies, see Henry 5.16.11 n. 25. Generally the Anti-Federalist treatment was similar to that of Centinel. Cf. Federal Farmer (2.8); vol. 1 above, ch. 4. n. 2. The question is discussed by Jackson Turner Main in *The Antifederalists*, Appendix A, "Separate Confederacies."

76. The name in the original text seems to be a misspelling compounded by a misprint. The reference is to Henry Home Kames, perhaps to his *Sketches of the History of Man* (Edinburgh 1774) I, book 2, sketch 6, 434, "War and Peace Compared."

77. See *New York Journal* 10 January 1787; see also above, n. 68.

78. See A Real Patriot, *Independent Gazetteer* 28 January 1787, reprinted in McMaster and Stone 524–25.

79. See Martin 2.4.36.

80. See above, n. 68.

81. "Puff" is identified as Benjamin Rush by Konkle, *George Bryan* 318.

82. James Wilson.

83. Essays by Conciliator appeared in the Philadelphia *Independent Gazetteer* on 9 January, 15 January, 24 January, 12 February, and 20 February 1788.

84. Three essays by A Freeman, "to the Minority of the Convention of Pennsylvania," were published in the *Pennsylvania Gazette* 23 January, 30 January, and 6 February 1788. These essays appear in fact to have been written by Tench Coxe. See Deliberator 3.13 intro.

85. Wilson must have winced, his biographer suggests, on reading these words. "The Centinel had guessed Wilson's dearest ambition and soiled it." Charles Page Smith, *James Wilson* 284.

86. See above, V, 2.7.94.

87. See above, IX, 2.7.13 n. 68.

88. All of these essays are reprinted here: Brutus 2.9; Cincinnatus 6.1; Cato 2.6.

89. Incorporating corrections of errata printed 25 February 1788.

90. James Wilson.

91. Robert Morris.

92. See above, VIII, 2.7.122, where Centinel says that by virtue of the "necessary and proper" clause "every possible law will be constitutional, as they [Congress] are to be the sole judges of the propriety of such laws. . . ." Cf. I, 2.7.12–19; V, 2.7.97. See Brutus, XII, 2.9.148 n. 97. It should be observed that the statements of congressional omnipotence relate to the interpretation of powers granted to the Congress, especially in relation to the states, while the statement of ultimate judicial authority has to do with a specific restriction on the Congress. The arguments might thus be reconciled, although Centinel does not attempt to do so.

93. For replies by Morris and Mifflin to these charges, see McMaster and Stone 786–89.

94. The "little Fiddler" was Judge Francis Hopkinson, a Federalist writer who had produced a widely reprinted and commented on lampoon of Bryan, "The New Roof"; a mock "intercepted" Centinel essay (numbered XV), very widely reprinted in Federalist papers; and a facetious account of a meeting of the "Wheelbarrow Society." Konkle, *George Bryan* 316–19. The Philadelphiensis essays are printed below, 3.9.

95. Two letters by George Bryan to John Ralston were printed in the *Pennsylvania Gazette* 26 March 1788. See Konkle, *George Bryan* 320–24, who, however, has the dates wrong.

96. The Pennsylvania Minority, Address and Reasons of Dissent (reprinted below, 3.11), was published in the *Pennsylvania Packet* on 18 December 1787. Before the end of 1787 it had been published as a broadside or pamphlet in Philadelphia, Hudson, and Boston. It was very widely reprinted in newspapers across the country.

97. Probably referring to Eleazer Oswald, editor of the Philadelphia *Independent Gazetteer,* and Francis Bailey, editor of the *Freeman's Journal.*

98. See McMaster and Stone 23.

99. The papers were commonly ascribed to Judge George Bryan, who is thus (presuming Samuel Bryan in fact to have been the author) the object of political filial piety of a characteristically overblown kind. On the authorship of Centinel, see above, 2.7 intro.

Observations Leading to a Fair Examination of the System Of Government Proposed by the Late Convention; And to Several Essential and Necessary Alterations in It. In a Number of Letters from the Federal Farmer to the Republican

1787

and

An Additional Number of Letters From the Federal Farmer to the Republican Leading to a Fair Examination of the System of Government Proposed by the Late Convention; To Several Essential and Necessary Alterations in It; And Calculated to Illustrate and Support the Principles And Positions Laid Down in the Preceding Letters

1788

The Observations of The Federal Farmer are generally, and correctly, considered to be one of the ablest Anti-Federalist pieces; they deserve to be read fully and carefully by any student of Anti-Federalist thought. Contrary to a common impression, the letters were surprisingly little reprinted in the newspapers, apparently only the Poughkeepsie *Country Journal* printing the whole series. But they enjoyed wide popularity in pamphlet form.[1] Four editions totaling, according to the publisher, several thousands of the pamphlet were sold in a few months; and in January 1788 the author published An Additional Number of Letters, which, being longer and more diffuse, apparently enjoyed less success. The texts of the original pamphlets are followed here.[2] Paul Leicester Ford printed only the original five letters, finding the Additional Letters largely repetitious. Forrest McDonald gener-

ally agreed and printed only four of the Additional Letters in his 1962 paperback edition.[3] There is no doubt that there *is* much repetition and that the Additional Letters are somewhat loosely constructed; but there is scarcely a letter that does not contain material of the first importance, and it is a mistake to confine one's study of The Federal Farmer's arguments to the first five letters. One of the best criticisms of these letters was made by Timothy Pickering in a letter to Charles Tillinghast dated 24 December 1787. They were also reviewed in Noah Webster's *American Museum*.[4]

The Federal Farmer is generally supposed to have been Richard Henry Lee, but this was unequivocally denied by William W. Crosskey in his *Politics and the Constitution*.[5] Crosskey promised to discuss the matter in a later volume, which, unfortunately, was never published.[6] While Crosskey's case against Lee's authorship does not appear to have been very strong, neither, it turns out, is the case to support the usual view. The present editor's review of the evidence was at an advanced stage when he was pleased to discover that Gordon Wood's independent and often parallel investigation, also stimulated by Crosskey's remark, had led him too to doubt the solidity of the usual attribution.[7]

Wood makes a powerful and substantial rebuttal to the usual assumption that Lee's thought and style are evident in The Federal Farmer. The reader may make his own comparison of The Federal Farmer and Lee's letter to Governor Randolph, also printed here.[8] The yield of such a comparison seems to be, generally speaking, many differences but none that are flatly contradictory, and many similarities, but none that were not shared with many other Anti-Federal writers. Perhaps most telling against the case for Lee's authorship is the fact that the primary concern of The Federal Farmer is the question of consolidation and the destruction of the states, about which Lee's letter says nothing. This is a puzzling difference, and it seems to have been the source of Crosskey's doubt. Of course to attempt to deny, and especially to establish, authorship on such grounds is an extremely treacherous business. Lee's private letters during the fall of 1787 and the first half of 1788 show many points of similarity with The Federal Farmer (though no more, perhaps, than with several other Anti-Federal writers), and they demonstrate in particular that Lee, like The Federal Farmer, was concerned with the issue of consolidation and doubtful that a single government could extend over the whole United States.[9] Crosskey's contention that Lee's opinion changed shortly before the Virginia ratifying convention, while not without some foundation, is not very persuasive.[10] Yet it *is* striking that Lee does not in his official letter of opposition give any attention to the argument that is most prominent in the Observations.

Lee is positively identified as The Federal Farmer in a piece by New England published in the *Connecticut Courant* on 24 December 1787. This piece was quite widely reprinted and seems to have given rise to a handful of essays in Massachusetts in which Lee is named as The Federal Farmer.[11]

This is probably also the source of George Cabot's penciled note, in his copy of the Additional Letters, of Lee's "supposed" authorship. This copy of the Additional Letters was given to the Boston Athenaeum and was, as Wood shows, apparently the authority for the attribution of The Federal Farmer to Lee in the *Athenaeum Catalogue* published in 1874, thence to Sabin's *Dictionary of Books Relating to America*, and thence to Bancroft, Ford, and American historians generally.[12] This is a slim basis for attribution, but the evidence in these matters is usually slim, and it would hardly have been contradicted, even given the discrepancies in tone and argument between The Federal Farmer and Lee's letter, but for silence or ignorance among contemporaries who might be expected to know of Lee's authorship.[13]

Webster and Pickering, in their reviews of the essays, gave no evidence of knowing the author.[14] Virginian Edward Carrington sent The Federal Farmer's two volumes to Jefferson, describing them as reputedly "the best of anything that has been written in the opposition," but reporting that "the author is not known."[15] There is no evidence of authorship in Lee's correspondence or in the Lee family papers.[16] Moreover, while Lee's grandson and early biographer refers to "the objections of Mr. Lee to the constitution, and his arguments in support of them, [which] may be seen by the reader in eloquent and powerful detail, in his letters in the body of correspondence written during the years 1787 and 1788," he makes no reference to The Federal Farmer, as he surely would have done had he thought Lee was the author.[17] Considering the success and reputation of The Federal Farmer, it is strange that Lee never acknowledged authorship if they were his—yet the same could be said of just about any other possible author. The case against Lee's authorship remains inconclusive. But if, as seems probable, the only solid positive evidence is the essay of New England and its derivatives, the case for Lee's authorship is surely a good deal weaker than has usually been assumed.

Why is there so little extant evidence about a pamphlet so widely known and respected? Part of the reason, at least, is that these eighteenth-century Americans, while sharing with the rest of humankind a curiosity and disposition to gossip about personalities, really did think that what counts most (or at least what ought to count most) in political debate is what is said rather than who said it.[18] The Observations fall into four parts: first, a preface dealing with the way in which the Constitution ought to be considered (I, 2.8.1–8); second, an examination of the feasibility of a consolidation of the United States into one government on free principles (I, 2.8.9–14; II, 2.8.15–23); third, an examination of the organization and powers of the proposed government (III, 2.8.24–43; IV, 2.8.44–58); fourth, a conclusion (V, 2.8.59–66). Of particular importance are the excellent discussions of representation and the jury trial that run throughout these and the Additional Letters. The Additional Letters, which are taken up largely with an

examination of the organization of the three branches of the government, also contain especially important discussions of federalism (VI, 2.8.72–73), the federal republic (VI, 2.8.75–80; XVII, 2.8.204–13), and bills of rights (XVI, 2.8.196–203). What follows is an extended outline of the argument of the essays.

OBSERVATIONS

I. *Preface* (I, 2.8.1–8).
There is no reason for hasty or ill-considered adoption.
While the plan proposed appears to be partly federal, it is principally calculated to make the states one consolidated government, as is seen by examining the plan, its history, and the politics of its friends.

II. *The states cannot be consolidated into one entire government on free principles* (I, 2.8.9–14; II, 2.8.15–23; III, 2.8.24).
   A. A consideration of the several forms on which the United States might exist as one nation (I, 2.8.10–13).
   B. Impracticability of free and equal government extending over large and heterogeneous territory (I, 2.8.14).
   C. The Constitution does not, and cannot, provide the two essential parts of free government, a substantial representation of the people in the legislature (II, 2.8.15) and the jury trial of the vicinage (II, 2.8.16).
   D. Other considerations:
      1. The center and the extremes will not share benefits; and, because of the limited operation of the laws of a free government, the law will have to be enforced at the extremes by fear and fraud (II, 2.8.17–18).
      2. It is difficult, though not impossible, to frame a Bill of Rights for such a varied country (II, 2.8.19–21).
   E. The Constitution lodges very extensive powers in an inherently defective government, with the result either of neglected laws or military enforcement leading, in either case, to despotism (II, 2.8.22–23).

III. *Organization and powers of the new government* (III, 2.8.25–43, IV, 2.8.44–58).
   A. Organization (III, 2.8.25–34):
      Each part of the government briefly examined and criticized (III, 2.8.25–30). The deficiencies, particularly the smallness of the House of Representatives, the compromise basis of the Senate, and the blending of powers, are admittedly the inevitable result of our situation, which reinforces the conclusion that it is not possible to consolidate the states on proper principles (III, 2.8.31–34).

B. Powers improperly or prematurely lodged (III, 2.8.35–43; IV, 2.8.44):
   1. Powers regarding external objects and some regarding internal objects ought to be lodged in the general government, but unlimited power to lay taxes and extensive control of military strength of the country are dangerous; power in these critical areas should be granted extremely cautiously so long as the federal government is so defective especially regarding representation (which is further discussed here) (III, 2.8.35–40).
   2. The extensive jurisdiction given to federal judiciary is examined and shown, in many points, to be unnecessary and dangerous. Jury trial of the vicinage is not secured (III, 2.8.41–43; IV, 2.8.44).

C. Undefined powers (IV 2.8.44–45): Provisions regarding direct taxes, regarding qualifications of the vice president, regarding appointment of inferior officers, regarding congressional control over the appellate jurisdiction of the Supreme Court.

D. Powers the exercise of which is unsecured (IV, 2.8.46–58):
   1. Supremacy clause—no provision that treaties shall be made in pursuance of Constitution.
   2. Necessary and proper clause—power of Congress not restricted to a few national objects.
   3. No Bill of Rights with reservations for states and individuals: (a) religion, (b) trial by jury, (c) press.
   4. Provision for amendment—Constitution will transfer power from the many to the few, who will resist further change.

IV. *Conclusion* (V, 2.8.59–66).
Government ought to preserve, not undermine, the equal division of our land and the free and manly habits of our people.

We need improved federal government, and there are many good things here, but the value is lessened by the want of a representation of the people.

Extreme partisans favoring and opposing the Constitution—examination of activities of partisans for the Constitution.

Constitution should be considered freely and carefully and amendments proposed.

ADDITIONAL LETTERS

I. *General and introductory* (VI, 2.8.67–92).
A. Character of Federalist and Anti-Federalist partisans (VI, 2.8.71–73):

This is a continuation of the preface in letter I and of discussion in V, with important discussion of "honest" federalists, "pretended" federalists, "true" federalists, and of misleading terms, "federalist" and "anti-federalist."

B. General positions and principles (VI, 2.8.74–80):
A (rather miscellaneous) brief restatement of earlier points about the need for a more efficient government, the necessity of a federal republic in such an extensive territory, the importance of a substantial representation and jury trial. A distinction is drawn between natural, constitutional, and common or legal rights.

C. Leading features of the Articles of Confederation (VI, 2.8.81–86).

D. Organization of state governments (VI, 2.8.87–92).

II. *Legislative branch* (VII–XII, 2.8.93–165).

A. Introduction (VII, 2.8.93–96):
Must have government—aim is to have one operating by *persuasion,* or it will operate by *force.*

Criteria of fair and equal representation: same interests, feelings, opinions, and views as people at large.

B. Representation is insubstantial and ought to be increased (VII–X, 2.8.97–142).

1. Substantial representation should contain representatives of all orders of society to maintain balance. Two major classes, aristocracy and democracy; their subordinate classes, their characteristics; and subsidiary interests and parties. (An important discussion.) The representation in the House of Representatives is too small to reflect these classes and interests and will be drawn largely from the aristocracy (VII, 2.8.97–100).

Observations in defense of representation as provided in the Constitution listed (VII, 2.8.101).

2. England as a genuine balance among the several orders (VIII, 2.8.102–10):
Contrast to Rome—the differences lie in substantial representation in England. (Secondary discussion but still important on question of representation.)

3. Observations of advocates answered (IX–X, 2.8.111–42):
People will elect good men (important on representation) (X, 2.8.111–18).

Members of Congress must return home and bear the burdens they impose on others (IX, 2.8.119–26).

People have a strong arm to check their rulers (X, 2.8.127).

States are part of the system and will balance the general government (but states have no *constitutional* check) (X, 2.8.128).

Objects of Congress are few and national (X, 2.8.130–32).

House of Representatives will increase in size in time (X, 2.8.133–34).

Difficulty of assembling many men without making them a mob (X, 2.8.136).

Congress will have no temptation to do wrong (X, 2.8.138).

People will be free as long as they possess habits of free men (X, 2.8.139).

4. Organization, appointment, powers of Senate (XI, 2.8.143–47):
Cannot have genuine representation of aristocracy in the United States; so Senate will contain generally same kind of men as high posts of House of Representatives; checks will be only those limited ones derived from different modes of appointment, different terms of office, mere fact of a second branch, etc.

While Senate is useful, some revisions should be made: terms of office should be shortened, senators should be recallable, and provisions should be made for rotation. Treaty power might be dangerous, but whole Congress has power to make commercial regulations.

C. The elections ought to be better secured (XII, 2.8.148–65):
All general principles regarding electors and elected, mode of election (which should be by majority vote in districts, etc.), should be laid down in Constitution. Any necessary discretion should reside in state legislatures, closest to the people.

III. *Executive branch* (XIII–XIV, 2.8.166–82).

A. Appointments (XIII, 2.8.166–72; XIV, 2.8.173–76):
Executive necessary but dangerous—need to keep it balanced by distributing appointments.

Various methods of appointment sketched and discussed—in selecting from among these the aims are to keep balance in government and to prevent legislature from becoming infected by the spirit of office-men.

B. Election and powers of President (XIV, 2.8.177–82):
Unity in executive; general need for "first man."

Must be given ample powers; chief concern should be to avoid *perpetuation* of power in any man or family. Thus should not be reeligible.

Veto power—combination of executive and judges is best.

IV. *Judicial branch* (XV, 2.8.183–95).

Peculiar character of judicial branch and its dangerous tendency in popular government (2.8.183–84).

Organization of judiciary (2.8.185–88).

Supreme Court appellate jurisdiction over fact and law (2.8.189).

Importance of trial by jury (2.8.190–94).

Law and equity (2.8.195).

V. *Powers of new government* (XVI–XVIII, 2.8.196–230).

A. Bill of Rights (XVI, 2.8.196–203).

1. Basic purpose of Bill of Rights in limited government (XVI, 2.8.196–98).
2. Specific protections needed, relating to trial by jury, ex post facto laws, habeas corpus, judicial procedure, quartering of soldiers, and freedom of press (XVI, 2.8.199–203).

B. Need for federal republic to preserve free and mild government in the United States (XVII, 204–13; XVIII, 214–30).

1. Description of federal republic (XVII, 2.8.204–13).

Essential characteristics of federal republic (2.8.204–5).

Additional powers needed but checks of federal system must be maintained (2.8.206–9).

Additional federal checks that may be desirable (2.8.210).

Enlightened and spirited character of the people will not be sufficient if state governments possess no real power (2.8.211–13).

2. Discussion of powers granted to new government (XVIII, 2.8.214–29).
3. The true bond of the American union must be formed of pure federal principles (XVIII, 2.8.230).

1. See J. Wadsworth to R. King, 16 December 1787, *The Life and Correspondence of Rufus King* X, 264; DePauw, *The Eleventh Pillar* 104, 113; Samuel Bannister

Harding, *The Contest over the Ratification of the Federal Constitution in the State of Massachusetts* (Cambridge, Mass., 1896) 17. Robert Rutland mistakenly says that the letters of The Federal Farmer were published in the *New York Journal;* they were in fact published in the Poughkeepsie *Country Journal,* November 1787 through January 1788, as Rutland later correctly notes; *The Ordeal of the Constitution* 22.

2. Both the Observations and the Additional Letters were printed in New York by Thomas Greenleaf.

3. Ford, *Pamphlets* 277 ff.; *Empire and Nation,* ed. McDonald. The text of the McDonald edition is extremely unreliable, containing numerous alterations of spelling and punctuation which the reader is not led to expect and, more seriously, a substantial number of misreadings, misprints, omitted lines, etc. A copy of the original edition of the Additional Letters was brought out by Quadrangle Books, Chicago, in 1962, but it is now out of print.

4. Octavius Pickering and Charles Upham, *The Life of Timothy Pickering* (Boston 1873) II, 352–68; *American Museum* May 1788, 422–33.

5. (Chicago 1953) II, 1299–1300.

6. [A third volume was completed by Crosskey's literary executor, William Jeffrey, Jr., and published in 1980 under the title *The Political Background of the Federal Convention,* but, since it covers events through 22 May 1788 only, it does not include the Federal Farmer discussion.—M.D.] I am informed by Professor Jeffrey that Crosskey's opinion was based on the following grounds. First, Crosskey reportedly discovered in the John Lamb papers a letter from Lee to Lamb saying that he "would be interested in seeing the Letters of a Federal Farmer." There being no reason why he should conceal his authorship from Lamb, this would strongly suggest that he was not the author. But I find no such letter in the Lamb papers. Lamb's committee did distribute, among other materials, the Observations of The Federal Farmer; and Lee did thank Lamb for sending him some Anti-Federal materials, promising to read them with pleasure; but there is no evidence that The Federal Farmer was included in the packet sent to Lee. See Letter of Joshua Atherton, 23 June 1788, John Lamb Papers, box 5, no. 25, New-York Historical Society; letter of Richard Henry Lee to John Lamb, 27 June 1788, in Leake, *Memoir of the Life and Times of General John Lamb* 309–10. [On reconsidering this question, Professor Jeffrey reports that he may have misled Storing about this ground for Crosskey's opinion. Jeffrey believes that Lamb's letter to Lee, and Lee's response acknowledging receipt of the Anti-Federal materials, including The Federal Farmer, persuaded Crosskey that Lee was not the author.—M.D.] Crosskey's second ground was the fact that Lee published over his own name his objections to the Constitution in his letter to Governor Randolph of 16 October 1787 (see below, 5.6), and would therefore, Crosskey reasoned, have had no motive for concealing his opposition by assuming a pseudonym for the longer pamphlet. But a pseudonym was used not merely or even mainly to enable the author to conceal his opinion or to protect himself; it was a convention aimed at directing attention at the arguments rather than at personalities. A public figure might well declare his own position in a speech or letter and go on to publish a longer, more analytical piece over a pseudonym. Many of the prominent figures in the debate over the Constitution did precisely that.

7. Gordon S. Wood, "The Authorship of *The Letters from the Federal Farmer,*" *William and Mary Quarterly* April 1974.

8. See below, 5.6.

9. Lee, *Letters* II, 433–76.

10. Crosskey, *Politics and the Constitution* II, 1300.

11. New England was reprinted in the *New Hampshire Mercury* 2 January 1788; New York *Daily Advertiser* 4 January; *Massachusetts Centinel* 5 January; *Gazette of the State of Georgia* 21 February; Charleston *City Gazette* 7 April 1788; Charleston *Columbian Herald* 14 April. Subsequent items identifying Lee as The Federal Farmer (and not mentioned by Wood) appeared in the *Massachusetts Gazette* 1 January (and was reprinted in New York and Pennsylvania papers); *Massachusetts Centinel* 2 January; and Boston *American Herald* 7 January. I am indebted for most of this

information to Steven R. Boyd, University of Texas, San Antonio, who finds here a widespread assumption among contemporaries that Lee was the author.

12. Wood, *William and Mary Quarterly* April 1974, 304–7. See Bancroft, *History of the Formation of the Constitution* II, 230; see also 451–52; Ford, *Pamphlets* 277.

13. One further shred of evidence is provided by the title page of the copy of the Observations of The Federal Farmer in the American Antiquarian Society, which bears a notation, "Richard Henry Lee." The handwriting does not, however, appear to be contemporaneous with the publication of the pamphlet.

14. See above, note 4.

15. 9 June 1788. *Proceedings of the Massachusetts Historical Society* 2d series, XVII (1903), 501. Oliver Ellsworth (as A Landholder) contended that Lee had revised Mason's and Gerry's statements of their objections and was "supposed to be the author of most of the scurrility poured out in the New York papers against the new constitution," but he did not mention The Federal Farmer specifically. Ford, *Essays* 161. See letter from J. Wadsworth to Rufus King, 16 December 1787 (above, n. 1), describing the distribution of the Letters, without identifying the author. One of John Lamb's correspondents, Hugh Ledlie, writing from Hartford, reported insinuations made in the Connecticut convention "that out of the impost £8,000 was paid by this State annually to the State of New York out of which you recd. upwards of £900 which enabled you & others to write the foederal farmer and other false Libels and send them into this & the Neighbouring States to poison the minds of the good people against the good C——n." John Lamb Papers, box 5, no. 1; New-York Historical Society.

16. Lee, *Letters* passim; Lee Family Papers, 1742–1795 (microfilm, University of Virginia Library).

17. Richard H. Lee, ed., *Memoir of the Life of Richard Henry Lee* (Philadelphia 1825) I, 240. Lee's most recent biographer calls the Letters of The Federal Farmer "Lee's greatest literary achievement," but he does not consider the grounds of attribution to Lee. Oliver Perry Chitwood, *Richard Henry Lee: Statesman of the Revolution* (Morgantown, W.Va. 1967) 173.

18. "It is not material whether the federal farmer belongs to Virginia or Kamtschatka—whether he owns five hundred negroes, or is a man of no property at all—if his arguments are cogent—his reasonings conclusive. . . . Nor is it of consequence to the publick, or to the general cause, whether mr. *Lee* is an enemy, or a devotee to the fame and to the merit, of general *Washington*. . . . We are not contending for the characters of men. . . . We wish to view every thing on the broad scale of independence to America—*the sovereignty of the United States*, and *the freedom* of the people. . . ." Helvidius Priscus, below, 4.12.9.

I

October 8th, 1787.

Dear Sir,

My letters to you last winter, on the subject of a well balanced national government for the United States, were the result of free enquiry;[1] when I passed from that subject to enquiries relative to our commerce, revenues, past administration, etc. I anticipated the anxieties I feel, on carefully examining the plan of government proposed by the convention. It appears to be a plan retaining some federal features; but to be the first important step, and to aim strongly to one consolidated government of the United States. It leaves the powers of government, and the representation of the people, so 2.8.1

unnaturally divided between the general and state governments, that the operations of our system must be very uncertain. My uniform federal attachments, and the interest I have in the protection of property, and a steady execution of the laws, will convince you, that, if I am under any biass at all, it is in favor of any general system which shall promise those advantages. The instability of our laws increases my wishes for firm and steady government; but then, I can consent to no government, which, in my opinion, is not calculated equally to preserve the rights of all orders of men in the community. My object has been to join with those who have endeavoured to supply the defects in the forms of our governments by a steady and proper administration of them. Though I have long apprehended that fraudalent debtors, and embarrassed men, on the one hand, and men, on the other, unfriendly to republican equality, would produce an uneasiness among the people, and prepare the way, not for cool and deliberate reforms in the governments, but for changes calculated to promote the interests of particular orders of men.[2] Acquit me, sir, of any agency in the formation of the new system; I shall be satisfied with seeing, if it shall be adopted, a prudent administration. Indeed I am so much convinced of the truth of Pope's maxim, that "That which is best administered is best," that I am much inclined to subscribe to it from experience. I am not disposed to unreasonably contend about forms.[3] I know our situation is critical, and it behoves us to make the best of it.[4] A federal government of some sort is necessary. We have suffered the present to languish; and whether the confederation was capable or not originally of answering any valuable purposes, it is now but of little importance. I will pass by the men, and states, who have been particularly instrumental in preparing the way for a change, and, perhaps, for governments not very favourable to the people at large. A constitution is now presented which we may reject, or which we may accept, with or without amendments; and to which point we ought to direct our exertions, is the question. To determine this question, with propriety, we must attentively examine the system itself, and the probable consequences of either step. This I shall endeavour to do, so far as I am able, with candor and fairness; and leave you to decide upon the propriety of my opinions, the weight of my reasons, and how far my conclusions are well drawn. Whatever may be the conduct of others, on the present occasion, I do not mean, hastily and positively to decide on the merits of the constitution proposed. I shall be open to conviction, and always disposed to adopt that which, all things considered, shall appear to me to be most for the happiness of the community. It must be granted, that if men hastily and blindly adopt a system of government, they will as hastily and as blindly be led to alter or abolish it; and changes must ensue, one after another, till the peaceable and better part of the community will grow weary with changes, tumults and disorders, and be disposed to accept any government, however despotic, that shall promise stability and firmness.

The first principal question that occurs, is, Whether, considering our situation, we ought to precipitate the adoption of the proposed constitution? If we remain cool and temperate, we are in no immediate danger of any commotions; we are in a state of perfect peace, and in no danger of invasions; the state governments are in the full exercise of their powers; and our governments answer all present exigencies, except the regulation of trade, securing credit, in some cases, and providing for the interest, in some instances, of the public debts; and whether we adopt a change, three or nine months hence, can make but little odds with the private circumstances of individuals; their happiness and prosperity, after all, depend principally upon their own exertions. We are hardly recovered from a long and distressing war: The farmers, fishmen, &c. have not yet fully repaired the waste made by it. Industry and frugality are again assuming their proper station. Private debts are lessened, and public debts incurred by the war have been, by various ways, diminished; and the public lands have now become a productive source for diminishing them much more. I know uneasy men, who wish very much to precipitate, do not admit all these facts; but they are facts well known to all men who are thoroughly informed in the affairs of this country. It must, however, be admitted, that our federal system is defective, and that some of the state governments are not well administered; but, then, we impute to the defects in our governments many evils and embarrassments which are most clearly the result of the late war. We must allow men to conduct on the present occasion, as on all similar ones. They will urge a thousand pretences to answer their purposes on both sides. When we want a man to change his condition, we describe it as miserable, wretched, and despised; and draw a pleasing picture of that which we would have him assume. And when we wish the contrary, we reverse our descriptions. Whenever a clamor is raised, and idle men get to work, it is highly necessary to examine facts carefully, and without unreasonably suspecting men of falshood, to examine, and enquire attentively, under what impressions they act. It is too often the case in political concerns, that men state facts not as they are, but as they wish them to be; and almost every man, by calling to mind past scenes, will find this to be true. 2.8.2

Nothing but the passions of ambitious, impatient, or disorderly men, I conceive, will plunge us into commotions, if time should be taken fully to examine and consider the system proposed. Men who feel easy in their circumstances, and such as are not sanguine in their expectations relative to the consequences of the proposed change, will remain quiet under the existing governments. Many commercial and monied men, who are uneasy, not without just cause, ought to be respected; and, by no means, unreasonably disappointed in their expectations and hopes; but as to those who expect employments under the new constitution; as to those weak and ardent men who always expect to be gainers by revolutions, and whose lot it generally is to get out of one difficulty into another, they are very little to be 2.8.3

regarded: and as to those who designedly avail themselves of this weakness and ardor, they are to be despised. It is natural for men, who wish to hasten the adoption of a measure, to tell us, now is the crisis—now is the critical moment which must be seized, or all will be lost: and to shut the door against free enquiry, whenever conscious the thing presented has defects in it, which time and investigation will probably discover. This has been the custom of tyrants and their dependants in all ages. If it is true, what has been so often said, that the people of this country cannot change their condition for the worse, I presume it still behoves them to endeavour deliberately to change it for the better. The fickle and ardent, in any community, are the proper tools for establishing despotic government. But it is deliberate and thinking men, who must establish and secure governments on free principles. Before they decide on the plan proposed, they will enquire whether it will probably be a blessing or a curse to this people.

2.8.4 The present moment discovers a new face in our affairs. Our object has been all along, to reform our federal system, and to strengthen our governments—to establish peace, order and justice in the community—but a new object now presents. The plan of government now proposed is evidently calculated totally to change, in time, our condition as a people. Instead of being thirteen republics, under a federal head, it is clearly designed to make us one consolidated government. Of this, I think, I shall fully convince you, in my following letters on this subject. This consolidation of the states has been the object of several men in this country for some time past. Whether such a change can ever be effected in any manner; whether it can be effected without convulsions and civil wars; whether such a change will not totally destroy the liberties of this country—time only can determine.

2.8.5 To have a just idea of the government before us, and to shew that a consolidated one is the object in view, it is necessary not only to examine the plan, but also its history, and the politics of its particular friends.

2.8.6 The confederation was formed when great confidence was placed in the voluntary exertions of individuals, and of the respective states; and the framers of it, to guard against usurpation, so limited and checked the powers, that, in many respects, they are inadequate to the exigencies of the union. We find, therefore, members of congress urging alterations in the federal system almost as soon as it was adopted. It was early proposed to vest congress with powers to levy an impost, to regulate trade, etc. but such was known to be the caution of the states in parting with power, that the vestment, even of these, was proposed to be under several checks and limitations. During the war, the general confusion, and the introduction of paper money, infused in the minds of people vague ideas respecting government and credit. We expected too much from the return of peace, and of course we have been disappointed. Our governments have been new and unsettled; and several legislatures, by making tender, suspension, and paper

money laws, have given just cause of uneasiness to creditors. By these and other causes, several orders of men in the community have been prepared, by degrees, for a change of government; and this very abuse of power in the legislatures, which, in some cases, has been charged upon the democratic part of the community, has furnished aristocratical men with those very weapons, and those very means, with which, in great measure, they are rapidly effecting their favourite object. And should an oppressive government be the consequence of the proposed change, posterity may reproach not only a few overbearing unprincipled men, but those parties in the states which have misused their powers.

2.8.7 The conduct of several legislatures, touching paper money, and tender laws, has prepared many honest men for changes in government, which otherwise they would not have thought of—when by the evils, on the one hand, and by the secret instigations of artful men, on the other, the minds of men were become sufficiently uneasy, a bold step was taken, which is usually followed by a revolution, or a civil war. A general convention for mere commercial purposes was moved for—the authors of this measure saw that the people's attention was turned solely to the amendment of the federal system; and that, had the idea of a total change been started, probably no state would have appointed members to the convention. The idea of destroying, ultimately, the state government, and forming one consolidated system, could not have been admitted—a convention, therefore, merely for vesting in congress power to regulate trade was proposed. This was pleasing to the commercial towns; and the landed people had little or no concern about it. September, 1786, a few men from the middle states met at Annapolis, and hastily proposed a convention to be held in May, 1787, for the purpose, generally, of amending the confederation—this was done before the delegates of Massachusetts, and of the other states arrived—still not a word was said about destroying the old constitution, and making a new one—The states still unsuspecting, and not aware that they were passing the Rubicon, appointed members to the new convention, for the sole and express purpose of revising and amending the confederation—and, probably, not one man in ten thousand in the United States, till within these ten or twelve days, had an idea that the old ship was to be destroyed, and he put to the alternative of embarking in the new ship presented, or of being left in danger of sinking—The States, I believe, universally supposed the convention would report alterations in the confederation, which would pass an examination in congress, and after being agreed to there, would be confirmed by all the legislatures, or be rejected. Virginia made a very respectable appointment, and placed at the head of it the first man in America: In this appointment there was a mixture of political characters; but Pennsylvania appointed principally those men who are esteemed aristocratical. Here the favourite moment for changing the government was evidently discerned by a few men, who seized it with address. Ten other states ap-

pointed, and tho' they chose men principally connected with commerce and the judicial department yet they appointed many good republican characters—had they all attended we should now see, I am persuaded a better system presented. The non-attendance of eight or nine men, who were appointed members of the convention, I shall ever consider as a very unfortunate event to the United States.[5]—Had they attended, I am pretty clear, that the result of the convention would not have had that strong tendency to aristocracy now discernable in every part of the plan.[6] There would not have been so great an accumulation of powers, especially as to the internal police of the country, in a few hands, as the constitution reported proposes to vest in them—the young visionary men, and the consolidating aristocracy, would have been more restrained than they have been. Eleven states met in the convention, and after four months close attention presented the new constitution, to be adopted or rejected by the people. The uneasy and fickle part of the community may be prepared to receive any form of government; but, I presume, the enlightened and substantial part will give any constitution presented for their adoption, a candid and thorough examination; and silence those designing or empty men, who weakly and rashly attempt to precipitate the adoption of a system of so much importance—We shall view the convention with proper respect—and, at the same time, that we reflect there were men of abilities and integrity in it, we must recollect how disproportionably the democratic and aristocratic parts of the community were represented—Perhaps the judicious friends and opposers of the new constitution will agree, that it is best to let it rest solely on its own merits, or be condemned for its own defects.

2.8.8 In the first place, I shall premise, that the plan proposed is a plan of accommodation—and that it is in this way only, and by giving up a part of our opinions, that we can ever expect to obtain a government founded in freedom and compact. This circumstance candid men will always keep in view, in the discussion of this subject.

2.8.9 The plan proposed appears to be partly federal, but principally however, calculated ultimately to make the states one consolidated government.

The first interesting question, therefore suggested, is, how far the states can be consolidated into one entire government on free principles. In considering this question extensive objects are to be taken into view, and important changes in the forms of government to be carefully attended to in all their consequences. The happiness of the people at large must be the great object with every honest statesman, and he will direct every movement to this point. If we are so situated as a people, as not to be able to enjoy equal happiness and advantages under one government, the consolidation of the states cannot be admitted.

2.8.10 There are three different forms of free government under which the United States may exist as one nation; and now is, perhaps, the time to determine to which we will direct our views.[7] 1. Distinct republics con-

nected under a federal head. In this case the respective state governments must be the principal guardians of the peoples rights, and exclusively regulate their internal police; in them must rest the balance of government. The congress of the states, or federal head, must consist of delegates amenable to, and removeable by the respective states: This congress must have general directing powers; powers to require men and monies of the states; to make treaties, peace and war; to direct the operations of armies, etc. Under this federal modification of government, the powers of congress would be rather advisary or recommendatory than coercive. 2. We may do away the several state governments, and form or consolidate all the states into one entire government, with one executive, one judiciary, and one legislature, consisting of senators and representatives collected from all parts of the union: In this case there would be a compleat consolidation of the states. 3. We may consolidate the states as to certain national objects, and leave them severally distinct independent republics, as to internal police generally. Let the general government consist of an executive, a judiciary, and balanced legislature, and its powers extend exclusively to all foreign concerns, causes arising on the seas to commerce, imports, armies, navies, Indian affairs, peace and war, and to a few internal concerns of the community; to the coin, post-offices, weights and measures, a general plan for the militia, to naturalization, *and, perhaps to bankruptcies*,[8] leaving the internal police of the community, in other respects, exclusively to the state governments; as the administration of justice in all causes arising internally, the laying and collecting of internal taxes, and the forming of the militia according to a general plan prescribed. In this case there would be a compleat consolidation, *quoad* certain objects only.[9]

Touching the first, or federal plan, I do not think much can be said in its favor: The sovereignty of the nation, without coercive and efficient powers to collect the strength of it, cannot always be depended on to answer the purposes of government; and in a congress of representatives of sovereign states, there must necessarily be an unreasonable mixture of powers in the same hands. 2.8.11

As to the second, or compleat consolidating plan, it deserves to be carefully considered at this time, by every American: If it be impracticable, it is a fatal error to model our governments, directing our views ultimately to it. 2.8.12

The third plan, or partial consolidation, is, in my opinion, the only one that can secure the freedom and happiness of this people. I once had some general ideas that the second plan was practicable,[10] but from long attention, and the proceedings of the convention, I am fully satisfied, that this third plan is the only one we can with safety and propriety proceed upon. Making this the standard to point out, with candor and fairness, the parts of the new constitution which appear to be improper, is my object. The convention appears to have proposed the partial consolidation evidently with a view to collect all powers ultimately, in the United States into one entire 2.8.13

government; and from its views in this respect, and from the tenacity of the small states to have an equal vote in the senate, probably originated the greatest defects in the proposed plan.

2.8.14 Independant of the opinions of many great authors, that a free elective government cannot be extended over large territories, a few reflections must evince, that one government and general legislation alone, never can extend equal benefits to all parts of the United States: Different laws, customs, and opinions exist in the different states, which by a uniform system of laws would be unreasonably invaded. The United States contain about a million of square miles, and in half a century will, probably, contain ten millions of people; and from the center to the extremes is about 800 miles.

Before we do away the state governments, or adopt measures that will tend to abolish them, and to consolidate the states into one entire government, several principles should be considered and facts ascertained:—These, and my examination into the essential parts of the proposed plan, I shall pursue in my next.

Your's &c.
The Federal Farmer.

II

October 9, 1787.

Dear Sir,

2.8.15 The essential parts of a free and good government are a full and equal representation of the people in the legislature, and the jury trial of the vicinage in the administration of justice—a full and equal representation, is that which possesses the same interests, feelings, opinions, and views the people themselves would were they all assembled—a fair representation, therefore, should be so regulated, that every order of men in the community, according to the common course of elections, can have a share in it—in order to allow professional men, merchants, traders, farmers, mechanics, etc. to bring a just proportion of their best informed men respectively into the legislature, the representation must be considerably numerous[11]—We have about 200 state senators in the United States, and a less number than that of federal representatives cannot, clearly, be a full representation of this people, in the affairs of internal taxation and police, were there but one legislature for the whole union. The representation cannot be equal, or the situation of the people proper for one government only—if the extreme parts of the society cannot be represented as fully as the central—It is apparently impracticable that this should be the case in this extensive country—it would be impossible to collect a representation of the parts of the country five, six, and seven hundred miles from the seat of government.

Under one general government alone, there could be but one judiciary, one supreme and a proper number of inferior courts. I think it would be totally impracticable in this case to preserve a due administration of justice, and the real benefits of the jury trial of the vicinage,[12]—there are now supreme courts in each state in the union; and a great number of county and other courts subordinate to each supreme court—most of these supreme and inferior courts are itinerant, and hold their sessions in different parts every year of their respective states, counties and districts—with all these moving courts, our citizens, from the vast extent of the country must travel very considerable distances from home to find the place where justice is administered. I am not for bringing justice so near to individuals as to afford them any temptation to engage in law suits; though I think it one of the greatest benefits in a good government, that each citizen should find a court of justice within a reasonable distance, perhaps, within a day's travel of his home; so that, without great inconveniences and enormous expences, he may have the advantages of his witnesses and jury—it would be impracticable to derive these advantages from one judiciary—the one supreme court at most could only set in the centre of the union, and move once a year into the centre of the eastern and southern extremes of it—and, in this case, each citizen, on an average, would travel 150 or 200 miles to find this court—that, however, inferior courts might be properly placed in the different counties, and districts of the union, the appellate jurisdiction would be intolerable and expensive. 2.8.16

If it were possible to consolidate the states, and preserve the features of a free government, still it is evident that the middle states, the parts of the union, about the seat of government, would enjoy great advantages, while the remote states would experience the many inconveniences of remote provinces. Wealth, offices, and the benefits of government would collect in the centre: and the extreme states[13] and their principal towns, become much less important.[14] 2.8.17

There are other considerations which tend to prove that the idea of one consolidated whole, on free principles, is ill-founded—the laws of a free government rest on the confidence of the people, and operate gently—and never can extend their influence very far—if they are executed on free principles, about the centre, where the benefits of the government induce the people to support it voluntarily; yet they must be executed on the principles of fear and force in the extremes—This has been the case with every extensive republic of which we have any accurate account.[15] 2.8.18

There are certain unalienable and fundamental rights, which in forming the social compact, ought to be explicitly ascertained and fixed—a free and enlightened people, in forming this compact, will not resign all their rights to those who govern, and they will fix limits to their legislators and rulers, which will soon be plainly seen by those who are governed, as well as by those who govern: and the latter will know they cannot be passed un- 2.8.19

perceived by the former, and without giving a general alarm—These rights should be made the basis of every constitution: and if a people be so situated, or have such different opinions that they cannot agree in ascertaining and fixing them, it is a very strong argument against their attempting to form one entire society, to live under one system of laws only.—I confess, I never thought the people of these states differed essentially in these respects; they having derived all these rights from one common source, the British systems; and having in the formation of their state constitutions, discovered that their ideas relative to these rights are very similar. However, it is now said that the states differ so essentially in these respects, and even in the important article of the trial by jury, that when assembled in convention, they can agree to no words by which to establish that trial, or by which to ascertain and establish many other of these rights, as fundamental articles in the social compact.[16] If so, we proceed to consolidate the states on no solid basis whatever.

2.8.20 But I do not pay much regard to the reasons given for not bottoming the new constitution on a better bill of rights. I still believe a complete federal bill of rights to be very practicable.[17] Nevertheless I acknowledge the proceedings of the convention furnish my mind with many new and strong reasons, against a complete consolidation of the states. They tend to convince me, that it cannot be carried with propriety very far—that the convention have gone much farther in one respect than they found it practicable to go in another; that is, they propose to lodge in the general government very extensive powers—*powers* nearly, if not altogether, complete and unlimited, over the purse and the sword. But, in its organization, they furnish the strongest proof that the proper limbs, or parts of a government, to support and execute those powers on proper principles (or in which they can be safely lodged) cannot be formed. These powers must be lodged somewhere in every society; but then they should be lodged where the strength and guardians of the people are collected. They can be wielded, or safely used, in a free country only by an able executive and judiciary, a respectable senate, and a secure, full, and equal representation of the people. I think the principles I have premised or brought into view, are well founded—I think they will not be denied by any fair reasoner. It is in connection with these, and other solid principles, we are to examine the constitution. It is not a few democratic phrases, or a few well formed features, that will prove its merits; or a few small omissions that will produce its rejection among men of sense; they will enquire what are the essential powers in a community, and what are nominal ones; where and how the essential powers shall be lodged to secure government, and to secure true liberty.

2.8.21 In examining the proposed constitution carefully, we must clearly perceive an unnatural separation of these powers from the substantial representation of the people. The state governments will exist, with all their governors, senators, representatives, officers and expences; in these will be

nineteen-twentieths of the representatives of the people; they will have a near connection, and their members an immediate intercourse with the people: and the probability is, that the state governments will possess the confidence of the people, and be considered generally as their immediate guardians.

2.8.22 The general government will consist of a new species of executive, a small senate, and a very small house of representatives. As many citizens will be more than three hundred miles from the seat of this government as will be nearer to it, its judges and officers cannot be very numerous, without making our governments very expensive. Thus will stand the state and the general governments, should the constitution be adopted without any alterations in their organization: but as to powers, the general government will possess all essential ones, at least on paper, and those of the states a mere shadow of power. And therefore, unless the people shall make some great exertions to restore to the state governments their powers in matters of internal police; as the powers to lay and collect, exclusively, internal taxes, to govern the militia, and to hold the decisions of their own judicial courts upon their own laws final, the balance cannot possibly continue long: but the state governments must be annihilated, or continue to exist for no purpose.

2.8.23 It is however to be observed, that many of the essential powers given the national government are not exclusively given; and the general government may have prudence enough to forbear the exercise of those which may still be exercised by the respective states. But this cannot justify the impropriety of giving powers, the exercise of which prudent men will not attempt, and imprudent men will, or probably can, exercise only in a manner destructive of free government. The general government, organized as it is, may be adequate to many valuable objects, and be able to carry its laws into execution on proper principles in several cases; but I think its warmest friends will not contend, that it can carry all the powers proposed to be lodged in it into effect, without calling to its aid a military force, which must very soon destroy all elective governments in the country, produce anarchy, or establish despotism. Though we cannot have now a complete idea of what will be the operations of the proposed system, we may, allowing things to have their common course, have a very tolerable one. The powers lodged in the general government, if exercised by it, must intimately effect the internal police of the states, as well as external concerns; and there is no reason to expect the numerous state governments, and their connections, will be very friendly to the execution of federal laws in those internal affairs, which hitherto have been under their own immediate management. There is more reason to believe, that the general government, far removed from the people, and none of its members elected oftener than once in two years, will be forgot or neglected, and its laws in many cases disregarded, unless a multitude of officers and military force be continually kept in view, and

employed to enforce the execution of the laws, and to make the government feared and respected. No position can be truer than this, that in this country either neglected laws, or a military execution of them, must lead to a revolution, and to the destruction of freedom. Neglected laws must first lead to anarchy and confusion; and a military execution of laws is only a shorter way to the same point—despotic government.[18]

Your's, &c.
The Federal Farmer.

III

October 10th, 1787.

Dear Sir,

2.8.24 The great object of a free people must be so to form their government and laws, and so to administer them, as to create a confidence in, and respect for the laws; and thereby induce the sensible and virtuous part of the community to declare in favor of the laws, and to support them without an expensive military force.[19] I wish, though I confess I have not much hope, that this may be the case with the laws of congress under the new constitution. I am fully convinced that we must organize the national government on different principals, and make the parts of it more efficient, and secure in it more effectually the different interests in the community; or else leave in the state governments some powers propose[d] to be lodged in it—at least till such an organization shall be found to be practicable. Not sanguine in my expectations of a good federal administration, and satisfied, as I am, of the impracticability of consolidating the states, and at the same time of preserving the rights of the people at large, I believe we ought still to leave some of those powers in the state governments, in which the people, in fact, will still be represented—to define some other powers proposed to be vested in the general government, more carefully, and to establish a few principles to secure a proper exercise of the powers given it. It is not my object to multiply objections, or to contend about inconsiderable powers or amendments; I wish the system adopted with a few alterations; but those, in my mind, are essential ones; if adopted without, every good citizen will acquiesce though I shall consider the duration of our governments, and the liberties of this people, very much dependant on the administration of the general government.[20] A wise and honest administration, may make the people happy under any government; but necessity only can justify even our leaving open avenues to the abuse of power, by wicked, unthinking, or ambitious men. I will examine, first, the organization of the proposed government, in order to judge; 2d, with propriety, what powers are improperly,

at least prematurely lodged in it. I shall examine, 3d, the undefined powers; and 4th, those powers, the exercise of which is not secured on safe and proper ground.

First. As to the organization—the house of representatives, the democrative branch, as it is called, is to consist of 65 members: that is, about one representative for fifty thousand inhabitants, to be chosen biennially—the federal legislature may increase this number to one for each thirty thousand inhabitants, abating fractional numbers in each state.—Thirty-three representatives will make a quorum for doing business, and a majority of those present determine the sense of the house.—I have no idea that the interests, feelings, and opinions of three or four millions of people, especially touching internal taxation, can be collected in such a house.—In the nature of things, nine times in ten, men of the elevated classes in the community only can be chosen—Connecticut, for instance, will have five representatives—not one man in a hundred of those who form the democrative branch in the state legislature, will, on a fair computation, be one of the five—The people of this country, in one sense, may all be democratic; but if we make the proper distinction between the few men of wealth and abilities, and consider them, as we ought, as the natural aristocracy of the country,[21] and the great body of the people, the middle and lower classes, as the democracy, this federal representative branch will have but very little democracy in it, even this small representation is not secured on proper principles.—The branches of the legislature are essential parts of the fundamental compact, and ought to be so fixed by the people, that the legislature cannot alter itself by modifying the elections of its own members. This, by a part of Art. 1. Sect. 4. the general legislature may do, it may evidently so regulate elections as to secure the choice of any particular description of men.—It may make the whole state one district—make the capital, or any places in the state, the place or places of election—it may declare that the five men (or whatever the number may be the state may chuse) who shall have the most votes shall be considered as chosen—In this case it is easy to perceive how the people who live scattered in the inland towns will bestow their votes on different men—and how a few men in a city, in any order or profession, may unite and place any five men they please highest among those that may be voted for—and all this may be done constitutionally, and by those silent operations, which are not immediately perceived by the people in general.—I know it is urged, that the general legislature will be disposed to regulate elections on fair and just principles:—This may be true—good men will generally govern well with almost any constitution: but why in laying the foundation of the social system, need we unnecessarily leave a door open to improper regulations?—This is a very general and unguarded clause, and many evils may flow from that part which authorises the congress to regulate elections—Were it omitted, the regulations of elections would be solely in the respective states, where the people are sub- 2.8.25

stantially represented; and where the elections ought to be regulated, otherwise to secure a representation from all parts of the community, in making the constitution, we ought to provide for dividing each state into a proper number of districts, and for confining the electors in each district to the choice of some men, who shall have a permanent interest and residence in it; and also for this essential object, that the representative elected shall have a majority of the votes of those electors who shall attend and give their votes.

2.8.26 In considering the practicability of having a full and equal representation of the people from all parts of the union, not only distances and different opinions, customs, and views, common in extensive tracts of country, are to be taken into view, but many differences peculiar to Eastern, Middle, and Southern states. These differences are not so perceivable among the members of congress, and men of general information in the states, as among the men who would properly form the democratic branch. The Eastern states are very democratic, and composed chiefly of moderate freeholders; they have but few rich men and no slaves; the Southern states are composed chiefly of rich planters and slaves; they have but few moderate freeholders, and the prevailing influence, in them, is generally a dissipated aristocracy: The Middle states partake partly of the Eastern, and partly of the Southern character.

2.8.27 Perhaps, nothing could be more disjointed, unweildly and incompetent to doing business with harmony and dispatch, than a federal house of representatives properly numerous for the great objects of taxation, et cetera collected from the several states; whether such men would ever act in concert; whether they would not worry along a few years, and then be the means of separating the parts of the union, is very problematical?—View this system in whatever form we can, propriety brings us still to this point, a federal government possessed of general and complete powers, as to those national objects which cannot well come under the cognizance of the internal laws of the respective states, and this federal government, accordingly, consisting of branches not very numerous.

2.8.28 The house of representatives is on the plan of consolidation, but the senate is intirely on the federal plan;[22] and Delaware will have as much constitutional influence in the senate, as the largest state in the union: and in this senate are lodged legislative, executive and judicial powers: Ten states in this union urge that they are small states, nine of which were present in the convention.—They were interested in collecting large powers into the hands of the senate, in which each state still will have its equal share of power. I suppose it was impracticable for the three large states, as they were called, to get the senate formed on any other principles: But this only proves, that we cannot form one general government on equal and just principles—and proves, that we ought not to lodge in it such extensive powers before we are convinced of the practicability of organizing it on just

and equal principles. The senate will consist of two members from each state, chosen by the state legislatures, every sixth year. The clause referred to, respecting the elections of representatives, empowers the general legislature to regulate the elections of senators also, "except as to the places of chusing senators."—There is, therefore, but little more security in the elections than in those of representatives: Fourteen senators make a quorum for business, and a majority of the senators present give the vote of the senate, except in giving judgment upon an impeachment, or in making treaties, or in expelling a member, when two-thirds of the senators present must agree—The members of the legislature are not excluded from being elected to any military offices, or any civil offices, except those created, or the emoluments of which shall be increased by themselves: two-thirds of the members present, of either house, may expel a member at pleasure. The senate is an independant branch of the legislature, a court for trying impeachments, and also a part of the executive, having a negative in the making of all treaties, and in appointing almost all officers.

The vice president is not a very important, if not an unncessary part of the system—he may be a part of the senate at one period, and act as the supreme executive magistrate at another—The election of this officer, as well as of the president of the United States seems to be properly secured;[23] but when we examine the powers of the president, and the forms of the executive, we shall perceive that the general government, in this part, will have a strong tendency to aristocracy, or the government of the few. The executive is, in fact, the president and senate in all transactions of any importance; the president is connected with, or tied to the senate; he may always act with the senate, but never can effectually counteract its views: The president can appoint no officer, civil or military, who shall not be agreeable to the senate; and the presumption is, that the will of so important a body will not be very easily controuled, and that it will exercise its powers with great address. 2.8.29

In the judicial department, powers ever kept distinct in well balanced governments, are no less improperly blended in the hands of the same men—in the judges of the supreme court is lodged, the law, the equity and the fact. It is not necessary to pursue the minute organical parts of the general government proposed.—There were various interests in the convention, to be reconciled, especially of large and small states; of carrying and non-carrying states; and of states more and states less democratic—vast labour and attention were by the convention bestowed on the organization of the parts of the constitution offered; still it is acknowledged there are many things radically wrong in the essential parts of this constitution—but it is said that these are the result of our situation: On a full examination of the subject, I believe it; but what do the laborious inquiries and determinations of the convention prove? If they prove any thing, they prove that we cannot consolidate the states on proper principles: The organization of the government presented proves, that we cannot form a general government in which 2.8.30

all power can be safely lodged; and a little attention to the parts of the one proposed will make it appear very evident, that all the powers proposed to be lodged in it, will not be then well deposited, either for the purposes of government, or the preservation of liberty. I will suppose no abuse of powers in those cases, in which the abuse of it is not well guarded against—I will suppose the words authorising the general government to regulate the elections of its own members struck out of the plan, or free district elections, in each state, amply secured.—That the small representation provided for shall be as fair and equal as it is capable of being made—I will suppose the judicial department regulated on pure principles, by future laws, as far as it can be by the constitution, and consist[ent] with the situation of the country—still there will be an unreasonable accumulation of powers in the general government, if all be granted, enumerated in the plan proposed. The plan does not present a well balanced government. The senatorial branch of the legislative and the executive are substantially united, and the president, or the first executive magistrate, may aid the senatorial interest when weakest, but never can effectually support the democratic[,] however it may be oppressed:—the excellency, in my mind, of a well balanced government is that it consists of distinct branches, each sufficiently strong and independant to keep its own station, and to aid either of the other branches which may occasionally want aid.

2.8.31 The convention found that any but a small house of representatives would be expensive, and that it would be impracticable to assemble a large number of representatives. Not only the determination of the convention in this case, but the situation of the states, proves the impracticability of collecting, in any one point, a proper representation.

2.8.32 The formation of the senate, and the smallness of the house, being, therefore, the result of our situation, and the actual state of things, the evils which may attend the exercise of many powers in this national government may be considered as without a remedy.

2.8.33 All officers are impeachable before the senate only—before the men by whom they are appointed, or who are consenting to the appointment of these officers. No judgment of conviction, on an impeachment, can be given unless two thirds of the senators agree. Under these circumstances the right of impeachment, in the house, can be of but little importance; the house cannot expect often to convict the offender; and, therefore, probably, will but seldom or never exercise the right. In addition to the insecurity and inconveniences attending this organization beforementioned, it may be observed, that it is extremely difficult to secure the people against the fatal effects of corruption and influence. The power of making any law will be in the president, eight senators, and seventeen representatives, relative to the important objects enumerated in the constitution. Where there is a small representation a sufficient number to carry any measure, may, with ease, be influenced by bribes, offices and civilities; they may easily form private

juntoes, and out door meetings, agree on measures, and carry them by silent votes.

Impressed, as I am, with a sense of the difficulties there are in the way of forming the parts of a federal government on proper principles, and seeing a government so unsubstantially organized, after so arduous an attempt has been made, I am led to believe, that powers ought to be given to it with great care and caution.[24] 2.8.34

In the second place it is necessary, therefore, to examine the extent, and the probable operations of some of those extensive powers proposed to be vested in this government. These powers, legislative, executive, and judicial, respect internal as well as external objects. Those respecting external objects, as all foreign concerns, commerce, imposts, all causes arising on the seas, peace and war, and Indian affairs, can be lodged no where else, with any propriety, but in this government. Many powers that respect internal objects ought clearly to be lodged in it; as those to regulate trade between the states, weights and measures, the coin or current monies, post-offices, naturalization, etc. These powers may be exercised without essentially effecting the internal police of the respective states: But powers to lay and collect internal taxes, to form the militia, to make bankrupt laws, and to decide on appeals, questions arising on the internal laws of the respective states, are of a very serious nature, and carry with them almost all other powers. These taken in connection with the others, and powers to raise armies and build navies, proposed to be lodged in this government, appear to me to comprehend all the essential powers in the community, and those which will be left to the states will be of no great importance. 2.8.35

A power to lay and collect taxes at discretion, is, in itself, of very great importance. By means of taxes, the government may command the whole or any part of the subject's property. Taxes may be of various kinds; but there is a strong distinction between external and internal taxes. External taxes are impost duties, which are laid on imported goods; they may usually be collected in a few seaport towns, and of a few individuals, though ultimately paid by the consumer; a few officers can collect them, and they can be carried no higher than trade will bear, or smuggling permit—that in the very nature of commerce, bounds are set to them.[25] But internal taxes, as poll and land taxes, excises, duties on all written instruments, etc. may fix themselves on every person and species of property in the community; they may be carried to any lengths, and in proportion as they are extended, numerous officers must be employed to assess them, and to enforce the collection of them. In the United Netherlands the general government has compleat powers, as to external taxation; but as to internal taxes, it makes requisitions on the provinces. Internal taxation in this country is more important, as the country is so very extensive. As many assessors and collectors of federal taxes will be above three hundred miles from the seat of the federal government as will be less. Besides, to lay and collect internal taxes, 2.8.36

in this extensive country, must require a great number of congressional ordinances, immediately operating upon the body of the people; these must continually interfere with the state laws, and thereby produce disorder and general dissatisfaction, till the one system of laws or the other, operating upon the same subjects, shall be abolished. These ordinances alone, to say nothing of those respecting the militia, coin, commerce, federal judiciary, etc. etc. will probably soon defeat the operations of the state laws and governments.

2.8.37 Should the general government think it politic, as some administrations (if not all) probably will, to look for a support in a system of influence, the government will take every occasion to multiply laws, and officers to execute them, considering these as so many necessary props for its own support.[26] Should this system of policy be adopted, taxes more productive than the impost duties will, probably, be wanted to support the government, and to discharge foreign demands, without leaving any thing for the domestic creditors. The internal sources of taxation then must be called into operation, and internal tax laws and federal assessors and collectors spread over this immense country. All these circumstances considered, is it wise, prudent, or safe, to vest the powers of laying and collecting internal taxes in the general government, while imperfectly organized and inadequate; and to trust to amending it hereafter, and making it adequate to this purpose? It is not only unsafe but absurd to lodge power in a government before it is fitted to receive it? [*Sic*.] It is confessed that this power and representation ought to go together. Why give the power first? Why give the power to the few, who, when possessed of it, may have address enough to prevent the increase of representation? Why not keep the power, and, when necessary, amend the constitution, and add to its other parts this power, and a proper increase of representation at the same time? Then men who may want the power will be under strong inducements to let in the people, by their representatives, into the government, to hold their due proportion of this power. If a proper representation be impracticable, then we shall see this power resting in the states, where it at present ought to be, and not inconsiderately given up.

2.8.38 When I recollect how lately congress, conventions, legislatures, and people contended in the cause of liberty, and carefully weighed the importance of taxation, I can scarcely believe we are serious in proposing to vest the powers of laying and collecting internal taxes in a government so imperfectly organized for such purposes. Should the United States be taxed by a house of representatives of two hundred members, which would be about fifteen members for Connecticut, twenty-five for Massachusetts, etc. still the middle and lower classes of people could have no great share, in fact, in taxation. I am aware it is said, that the representation proposed by the new constitution is sufficiently numerous; it may be for many purposes; but to suppose that this branch is sufficiently numerous to guard the rights of

the people in the administration of the government, in which the purse and sword is placed, seems to argue that we have forgot what the true meaning of representation is. I am sensible also, that it is said that congress will not attempt to lay and collect internal taxes; that it is necessary for them to have the power, though it cannot probably be exercised.[27]—I admit that it is not probable that any prudent congress will attempt to lay and collect internal taxes, especially direct taxes: but this only proves, that the power would be improperly lodged in congress, and that it might be abused by imprudent and designing men.

I have heard several gentlemen, to get rid of objections to this part of the constitution, attempt to construe the powers relative to direct taxes, as those who object to it would have them; as to these, it is said, that congress will only have power to make requisitions, leaving it to the states to lay and collect them.[28] I see but very little colour for this construction, and the attempt only proves that this part of the plan cannot be defended. By this plan there can be no doubt, but that the powers of congress will be complete as to all kinds of taxes whatever—Further, as to internal taxes, the state governments will have concurrent powers with the general government, and both may tax the same objects in the same year; and the objection that the general government may suspend a state tax, as a necessary measure for the promoting the collection of a federal tax, is not without foundation.[29]—As the states owe large debts, and have large demands upon them individually, there clearly would be a propriety in leaving in their possession exclusively, some of the internal sources of taxation, at least until the federal representation shall be properly encreased: The power in the general government to lay and collect internal taxes, will render its powers respecting armies, navies and the militia, the more exceptionable. By the constitution it is proposed that congress shall have power "to raise and support armies, but no appropriation of money to that use shall be for a longer term than two years; to provide and maintain a navy; to provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions: to provide for organizing, arming, and disciplining the militia: reserving to the states the right to appoint the officers, and to train the militia according to the discipline prescribed by congress; congress will have unlimited power to raise armies, and to engage officers and men for any number of years; but a legislative act applying money for their support can have operation for no longer term than two years, and if a subsequent congress do not within the two years renew the appropriation, or further appropriate monies for the use of the army, the army will be left to take care of itself. When an army shall once be raised for a number of years, it is not probable that it will find much difficulty in getting congress to pass laws for applying monies to its support. I see so many men in America fond of a standing army, and especially among those who probably will have a large share in administering the federal system; it is very evident to me, that we

2.8.39

shall have a large standing army as soon as the monies to support them can be possibly found. An army is a very agreeable place of employment for the young gentlemen of many families. A power to raise armies must be lodged some where: still this will not justify the lodging this power in a bare majority of so few men without any checks; or in the government in which the great body of the people, in the nature of things, will be only nominally represented. In the state governments the great body of the people, the yeomanry, etc. of the country, are represented: It is true they will chuse the members of congress, and may now and then chuse a man of their own way of thinking; but it is impossible for forty, or thirty thousand people in this country, one time in ten to find a man who can possess similar feelings, views, and interests with themselves: Powers to lay and collect taxes and to raise armies are of the greatest moment; for carrying them into effect, laws need not be frequently made, and the yeomanry, etc of the country ought substantially to have a check upon the passing of these laws; this check ought to be placed in the legislatures, or at least, in the few men the common people of the country, will, probably, have in congress, in the true sense of the word, "from among themselves."[30] It is true, the yeomanry of the country possess the lands, the weight of property, possess arms, and are too strong a body of men to be openly offended—and, therefore, it is urged, they will take care of themselves, that men who shall govern will not dare pay any disrespect to their opinions. It is easily perceived, that if they have not their proper negative upon passing laws in congress, or on the passage of laws relative to taxes and armies, they may in twenty or thirty years be by means imperceptible to them, totally deprived of that boasted weight and strength: This may be done in a great measure by congress, if disposed to do it, by modelling the militia. Should one fifth, or one eighth part of the men capable of bearing arms, be made a select militia, as has been proposed, and those the young and ardent part of the community, possessed of but little or no property, and all the others put upon a plan that will render them of no importance, the former will answer all the purposes of an army, while the latter will be defenceless. The state must train the militia in such form and according to such systems and rules as congress shall prescribe: and the only actual influence the respective states will have respecting the militia will be in appointing the officers. I see no provision made for calling out the *posse commitatus* for executing the laws of the union, but provision is made for congress to call forth the militia for the execution of them—and the militia in general, or any select part of it, may be called out under military officers, instead of the sheriff to enforce an execution of federal laws, in the first instance and thereby introduce an entire military execution of the laws.[31] I know that powers to raise taxes, to regulate the military strength of the community on some uniform plan, to provide for its defence and internal order, and for duly executing the laws, must be lodged somewhere; but still we ought not so to lodge them, as evidently to give one order of men in the

community, undue advantages over others; or commit the many to the mercy, prudence, and moderation of the few. And so far as it may be necessary to lodge any of the peculiar powers in the general government, a more safe exercise of them ought to be secured, by requiring the consent of two-thirds or three-fourths of congress thereto—until the federal representation can be increased, so that the democratic members in congress may stand some tolerable chance of a reasonable negative, in behalf of the numerous, important, and democratic part of the community.

I am not sufficiently acquainted with the laws and internal police of all the states to discern fully, how general bankrupt laws, made by the union, would effect them, or promote the public good. I believe the property of debtors, in the several states, is held responsible for their debts in modes and forms very different. If uniform bankrupt laws can be made without producing real and substantial inconveniences, I wish them to be made by congress.[32] 2.8.40

There are some powers proposed to be lodged in the general government in the judicial department, I think very unnecessarily.[33] I mean powers respecting questions arising upon the internal laws of the respective states. It is proper the federal judiciary should have powers co-extensive with the federal legislature—that is, the power of deciding finally on the laws of the union. By Art. 3. Sect. 2. the powers of the federal judiciary are extended (among other things) to all cases between a state and citizens of another state—between citizens of different states—between a state or the citizens thereof, and foreign states, citizens or subjects. Actions in all these cases, except against a state government, are now brought and finally determined in the law courts of the states respectively; and as there are no words to exclude these courts of their jurisdiction in these cases, they will have concurrent jurisdiction with the inferior federal courts in them; and, therefore, if the new constitution be adopted without any amendment in this respect, all those numerous actions, now brought in the state courts between our citizens and foreigners, between citizens of different states, by state governments against foreigners, and by state governments against citizens of other states, may also be brought in the federal courts; and an appeal will lay in them from the state courts, or federal inferior courts, to the supreme judicial court of the union. In almost all these cases, either party may have the trial by jury in the state courts; excepting paper money and tender laws, which are wisely guarded against in the proposed constitution, justice may be obtained in these courts on reasonable terms; they must be more competent to proper decisions on the laws of their respective states, than the federal courts can possibly be. I do not, in any point of view, see the need of opening a new jurisdiction to these causes—of opening a new scene of expensive law suits—of suffering foreigners, and citizens of different states, to drag each other many hundred miles into the federal courts. It is true, those courts may be so organized by a wise and prudent legislature, 2.8.41

as to make the obtaining of justice in them tolerably easy: they may in general be organized on the common law principles of the country: But this benefit is by no means secured by the constitution. The trial by jury is secured only in those few criminal cases, to which the federal laws will extend—as crimes committed on the seas, against the laws of nations, treason, and counterfeiting the federal securities and coin: But even in these cases, the jury trial of the vicinage is not secured—particularly in the large states, a citizen may be tried for a crime committed in the state, and yet tried in some states 500 miles from the place where it was committed; but the jury trial is not secured at all in civil causes. Though the convention have not established this trial, it is to be hoped that congress, in putting the new system into execution, will do it by a legislative act, in all cases in which it can be done with propriety. Whether the jury trial is not excluded [from] the supreme judicial court, is an important question. By Art. 3. Sect. 2. all cases affecting ambassadors, other public ministers, and consuls, and in those cases in which a state shall be party, the supreme court shall have jurisdiction. In all the other cases beforementioned, the supreme court shall have appellate jurisdiction, both as to *law and fact*, with such exception, and under such regulations, as the congress shall make. By court is understood a court consisting of judges; and the idea of a jury is excluded. This court, or the judges, are to have jurisdiction on appeals, in all the cases enumerated, as to law and fact; the judges are to decide the law and try the fact, and the trial of the fact being assigned to the judges by the constitution, a jury for trying the fact is excluded; however, under the exceptions and powers to make regulations, congress may, perhaps introduce the jury, to try the fact in most necessary cases.[34]

2.8.42 There can be but one supreme court in which the final jurisdiction will centre in all federal causes—except in cases where appeals by law shall not be allowed: The judicial powers of the federal courts extends in law and equity to certain cases: and, therefore, the powers to determine on the law, in equity, and as to the fact, all will concentre in the supreme court:—These powers, which by this constitution are blended in the same hands, the same judges, are in Great-Britain deposited in different hands—to wit, the decision of the law in the law judges, the decision in equity in the chancellor, and the trial of the fact in the jury. It is a very dangerous thing to vest in the same judge power to decide on the law, and also general powers in equity; for if the law restrain him, he is only to step into his shoes of equity, and give what judgment his reason or opinion may dictate; we have no precedents in this country, as yet, to regulate the divisions in equity as in Great Britain; equity, therefore, in the supreme court for many years will be mere discretion. I confess in the constitution of this supreme court, as left by the constitution, I do not see a spark of freedom or a shadow of our own or the British common law.

2.8.43 This court is to have appellate jurisdiction in all the other cases before

mentioned: Many sensible men suppose that cases before mentioned respect, as well the criminal cases as the civil ones, mentioned antecedently in the constitution, if so an appeal is allowed in criminal cases—contrary to the usual sense of law. How far it may be proper to admit a foreigner or the citizen of another state to bring actions against state governments, which have failed in performing so many promises made during the war, is doubtful: How far it may be proper so to humble a state, as to oblige it to answer to an individual in a court of law, is worthy of consideration; the states are now subject to no such actions; and this new jurisdiction will subject the states, and many defendants to actions, and processes, which were not in the contemplation of the parties, when the contract was made; all engagements existing between citizens of different states, citizens and foreigners, states and foreigners; and states and citizens of other states were made the parties contemplating the remedies then existing on the laws of the states—and the new remedy proposed to be given in the federal courts, can be founded on no principle whatever.

Your's &c.
The Federal Farmer.

IV

October 12th, 1787.

Dear Sir,

It will not be possible to establish in the federal courts the jury trial of the vicinage so well as in the state courts. 2.8.44

Third. There appears to me to be not only a premature deposit of some important powers in the general government—but many of those deposited there are undefined, and may be used to good or bad purposes as honest or designing men shall prevail. By Art. 1, Sect. 2, representatives and direct taxes shall be apportioned among the several states, etc.—same art. sect. 8, the congress shall have powers to lay and collect taxes, duties, etc. for the common defence and general welfare, but all duties, imposts and excises, shall be uniform throughout the United States: By the first recited clause, direct taxes shall be apportioned on the states. This seems to favour the idea suggested by some sensible men and writers, that congress, as to direct taxes, will only have power to make requisitions,[35] but the latter clause, power to lay and collect taxes, etc seems clearly to favour the contrary opinion and, in my mind, the true one, that congress shall have power to tax immediately individuals, without the intervention of the state legislatures[;] in fact the first clause appears to me only to provide that each state shall pay a certain portion of the tax, and the latter to provide that congress shall have

power to lay and collect taxes, that is to assess upon, and to collect of the individuals in the state, the state[']s quota; but these still I consider as undefined powers, because judicious men understand them differently.

2.8.45 It is doubtful whether the vice president is to have any qualifications; none are mentioned; but he may serve as president, and it may be inferred, he ought to be qualified therefore as the president; but the qualifications of the president are required only of the person to be elected president. By art. the 2, sect. 2. ``But the congress may by law vest the appointment of such inferior officers as they think proper in the president alone, in the courts of law, or in the heads of the departments:`` Who are inferior officers? May not a congress disposed to vest the appointment of all officers in the president, under this clause, vest the appointment of almost every officer in the president alone, and destroy the check mentioned in the first part of the clause, and lodged in the senate. It is true, this check is badly lodged, but then some check upon the first magistrate in appointing officers, ought it appears by the opinion of the convention, and by the general opinion, to be established in the constitution. By art. 3, sect. 2, the supreme court shall have appellate jurisdiction as to law and facts with such exceptions, etc. to what extent is it intended the exceptions shall be carried—Congress may carry them so far as to annihilate substantially the appellate jurisdiction, and the clause be rendered of very little importance.

2.8.46 4th. There are certain rights which we have always held sacred in the United States, and recognized in all our constitutions, and which, by the adoption of the new constitution in its present form, will be left unsecured.[36] By article 6, the proposed constitution, and the laws of the United States, which shall be made in pursuance thereof; and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby; any thing in the constitution or laws of any state to the contrary notwithstanding.

2.8.47 It is to be observed that when the people shall adopt the proposed constitution it will be their last and supreme act; it will be adopted not by the people of New-Hampshire, Massachusetts, etc. but by the people of the United States:[37] and wherever this constitution, or any part of it, shall be incompatible with the ancient customs, rights, the laws or the constitutions heretofore established in the United States, it will entirely abolish them and do them away: And not only this, but the laws of the United States which shall be made in pursuance of the federal constitution will be also supreme laws, and wherever they shall be incompatible with those customs, rights, laws or constitutions heretofore established, they will also entirely abolish them and do them away.

2.8.48 By the article before recited, treaties also made under the authority of the United States, shall be the supreme law: It is not said that these treaties shall be made in pursuance of the constitution—nor are there any con-

stitutional bounds set to those who shall make them: The president and two thirds of the senate will be empowered to make treaties indefinitely, and when these treaties shall be made, they will also abolish all laws and state constitutions incompatible with them. This power in the president and senate is absolute, and the judges will be bound to allow full force to whatever rule, article or thing the president and senate shall establish by treaty, whether it be practicable to set any bounds to those who make treaties, I am not able to say: if not, it proves that this power ought to be more safely lodged.

The federal constitution, the laws of congress made in pursuance of the constitution, and all treaties must have full force and effect in all parts of the United States; and all other laws, rights and constitutions which stand in their way must yield: It is proper the national laws should be supreme, and superior to state or district laws: but then the national laws ought to yield to unalienable or fundamental rights—and national laws, made by a few men, should extend only to a few national objects. This will not be the case with the laws of congress: To have any proper idea of their extent, we must carefully examine the legislative, executive and judicial powers proposed to be lodged in the general government, and consider them in connection with a general clause in art. 1. sect. 8, in these words (after inumerating a number of powers) "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof."—The powers of this government as has been observed, extend to internal as well as external objects, and to those objects to which all others are subordinate; it is almost impossible to have a just conception of these powers, or of the extent and number of the laws which may be deemed necessary and proper to carry them into effect, till we shall come to exercise those powers and make the laws. In making laws to carry those powers into effect, it is to be expected, that a wise and prudent congress will pay respect to the opinions of a free people, and bottom their laws on those principles which have been considered as essential and fundamental in the British, and in our government. But a congress of a different character will not be bound by the constitution to pay respect to those principles. 2.8.49

It is said, that when the people make a constitution, and delegate powers that all powers not delegated by them to those who govern is [*sic*] reserved in the people;[38] and that the people, in the present case, have reserved in themselves, and in their state governments, every right and power not expressly given by the federal constitution to those who shall administer the national government.[39] It is said on the other hand, that the people, when they make a constitution, yield all power not expressly reserved to themselves.[40] The truth is, in either case, it is mere matter of opinion and men usually take either side of the argument, as will best answer their purposes: 2.8.50

But the general presumption being, that men who govern, will, in doubtful cases, construe laws and constitutions most favourably for encreasing their own powers; all wise and prudent people, in forming constitutions, have drawn the line, and carefully described the powers parted with and the powers reserved. By the state constitutions, certain rights have been reserved in the people; or rather, they have been recognized and established in such a manner, that state legislatures are bound to respect them, and to make no laws infringing upon them. The state legislatures are obliged to take notice of the bills of rights of their respective states. The bills of rights, and the state constitutions, are fundamental compacts only between those who govern, and the people of the same state.

2.8.51 In the year 1788 the people of the United States make a federal constitution, which is a fundamental compact between them and their federal rulers; these rulers, in the nature of things, cannot be bound to take notice of any other compact. It would be absurd for them, in making laws, to look over thirteen, fifteen, or twenty state constitutions, to see what rights are established as fundamental, and must not be infringed upon, in making laws in the society. It is true, they would be bound to do it if the people, in their federal compact, should refer to the state constitutions, recognize all parts not inconsistent with the federal constitution, and direct their federal rulers to take notice of them accordingly; but this is not the case, as the plan stands proposed at present; and it is absurd, to suppose so unnatural an idea is intended or implied. I think my opinion is not only founded in reason, but I think it is supported by the report of the convention itself. If there are a number of rights established by the state constitutions, and which will remain sacred, and the general government is bound to take notice of them—it must take notice of one as well as another; and if unnecessary to recognize or establish one by the federal constitution, it would be unnecessary to recognize or establish another by it.[41] If the federal constitution is to be construed so far in connection with the state constitutions, as to leave the trial by jury in civil causes, for instance, secured; on the same principles it would have left the trial by jury in criminal causes, the benefits of the writ of habeas corpus, etc. secured; they all stand on the same footing; they are the common rights of Americans, and have been recognized by the state constitutions: But the convention found it necessary to recognize or re-establish the benefits of that writ, and the jury trial in criminal cases. As to *expost facto* laws, the convention has done the same in one case, and gone further in another. It is part of the compact between the people of each state and their rulers, that no *expost facto* laws shall be made. But the convention, by Art. I Sect. 10 have put a sanction upon this part even of the state compacts. In fact, the 9th and 10th Sections in Art. I. in the proposed constitution, are no more nor less, than a partial bill of rights; they establish certain principles as part of the compact upon which the federal legislators and officers can never infringe. It is here wisely stipulated, that the federal legislature shall

never pass a bill of attainder, or *expost facto* law; that no tax shall be laid on articles exported, etc. The establishing of one right implies the necessity of establishing another and similar one.

On the whole, the position appears to me to be undeniable, that this bill of rights ought to be carried farther, and some other principles established, as a part of this fundamental compact between the people of the United States and their federal rulers. 2.8.52

It is true, we are not disposed to differ much, at present, about religion; but when we are making a constitution, it is to be hoped, for ages and millions yet unborn, why not establish the free exercise of religion, as a part of the national compact. There are other essential rights, which we have justly understood to be the rights of freemen; as freedom from hasty and unreasonable search warrants, warrants not founded on oath, and not issued with due caution, for searching and seizing men's papers, property, and persons. The trials by jury in civil causes, it is said, varies so much in the several states, that no words could be found for the uniform establishment of it.[42] If so, the federal legislation will not be able to establish it by any general laws. I confess I am of opinion it may be established, but not in that beneficial manner in which we may enjoy it, for the reasons beforementioned. When I speak of the jury trial of the vicinage, or the trial of the fact in the neighbourhood,—I do not lay so much stress upon the circumstance of our being tried by our neighbours: in this enlightened country men may be probably impartially tried by those who do not live very near them: but the trial of facts in the neighbourhood is of great importance in other respects. Nothing can be more essential than the cross examining witnesses, and generally before the triers of the facts in question. The common people can establish facts with much more ease with oral than written evidence; when trials of facts are removed to a distance from the homes of the parties and witnesses, oral evidence becomes intolerably expensive, and the parties must depend on written evidence, which to the common people is expensive and almost useless; it must be frequently taken ex parte, and but very seldom leads to the proper discovery of truth. 2.8.53

The trial by jury is very important in another point of view. It is essential in every free country, that common people should have a part and share of influence, in the judicial as well as in the legislative department. To hold open to them the offices of senators, judges, and offices to fill which an expensive education is required, cannot answer any valuable purposes for them; they are not in a situation to be brought forward and to fill those offices; these, and most other offices of any considerable importance, will be occupied by the few. The few, the well born, etc. as Mr. Adams calls them,[43] in judicial decisions as well as in legislation, are generally disposed, and very naturally too, to favour those of their own description. 2.8.54

The trial by jury in the judicial department, and the collection of the people by their representatives in the legislature, are those fortunate in- 2.8.55

ventions which have procured for them, in this country, their true proportion of influence, and the wisest and most fit means of protecting themselves in the community. Their situation, as jurors and representatives, enables them to acquire information and knowledge in the affairs and government of the society; and to come forward, in turn, as the centinels and guardians of each other. I am very sorry that even a few of our countrymen should consider jurors and representatives in a different point of view, as ignorant troublesome bodies, which ought not to have any share in the concerns of government.

2.8.56 I confess I do not see in what cases the congress can, with any pretence of right, make a law to suppress the freedom of the press; though I am not clear, that congress is restrained from laying any duties whatever on printing, and from laying duties particularly heavy on certain pieces printed, and perhaps congress may require large bonds for the payment of these duties. Should the printer say, the freedom of the press was secured by the constitution of the state in which he lived, congress might, and perhaps, with great propriety, answer, that the federal constitution is the only compact existing between them and the people; in this compact the people have named no others, and therefore congress, in exercising the powers assigned them, and in making laws to carry them into execution, are restrained by nothing beside the federal constitution, any more than a state legislature is restrained by a compact between the magistrates and people of a county, city, or town of which the people, in forming the state constitution, have taken no notice.

It is not my object to enumerate rights of inconsiderable importance; but there are others, no doubt, which ought to be established as a fundamental part of the national system.

2.8.57 It is worthy observation, that all treaties are made by foreign nations with a confederacy of thirteen states—that the western country is attached to thirteen states—thirteen states have jointly and severally engaged to pay the public debts.—Should a new government be formed of nine, ten, eleven, or twelve states, those treaties could not be considered as binding on the foreign nations who made them. However, I believe the probability to be, that if nine states adopt the constitution, the others will.

2.8.58 It may also be worthy our examination, how far the provision for amending this plan, when it shall be adopted, is of any importance. No measures can be taken towards amendments, unless two-thirds of the congress, or two-thirds of the legislatures of the several states shall agree.—While power is in the hands of the people, or democratic part of the community, more especially as at present, it is easy, according to the general course of human affairs, for the few influential men in the community, to obtain conventions, alterations in government, and to persuade the common people they may change for the better, and to get from them a part of the power: But when power is once transferred from the many to the few, all changes become

extremely difficult; the government, in this case, being beneficial to the few, they will be exceedingly artful and adroit in preventing any measures which may lead to a change; and nothing will produce it, but great exertions and severe struggles on the part of the common people. Every man of reflection must see, that the change now proposed, is a transfer of power from the many to the few, and the probability is, the artful and ever active aristocracy, will prevent all peaceable measures for changes, unless when they shall discover some favourable moment to increase their own influence.[44] I am sensible, thousands of men in the United States, are disposed to adopt the proposed constitution, though they perceive it to be essentially defective, under an idea that amendments of it, may be obtained when necessary. This is a pernicious idea, it argues a servility of character totally unfit for the support of free government; it is very repugnant to that perpetual jealousy respecting liberty, so absolutely necessary in all free states, spoken of by Mr. Dickinson.[45]—However, if our countrymen are so soon changed, and the language of 1774, is become odious to them, it will be in vain to use the language of freedom, or to attempt to rouse them to free enquiries: But I shall never believe this is the case with them, whatever present appearances may be, till I shall have very strong evidence indeed of it.

Your's, &c.
The Federal Farmer.

V

October 13th, 1787

Dear Sir,

Thus I have examined the federal constitution as far as a few days leisure would permit. It opens to my mind a new scene; instead of seeing powers cautiously lodged in the hands of numerous legislators, and many magistrates, we see all important powers collecting in one centre, where a few men will possess them almost at discretion. And instead of checks in the formation of the government, to secure the rights of the people against the usurpations of those they appoint to govern, we are to understand the equal division of lands among our people, and the strong arm furnished them by nature and situation, are to secure them against those usurpations. If there are advantages in the equal division of our lands, and the strong and manly habits of our people, we ought to establish governments calculated to give duration to them, and not governments which never can work naturally, till that equality of property, and those free and manly habits shall be destroyed; these evidently are not the natural basis of the proposed constitution. No man of reflection, and skilled in the science of government, can 2.8.59

suppose these will move on harmoniously together for ages, or even for fifty years.[46] As to the little circumstances commented upon, by some writers, with applause—as the age of a representative, of the president, etc.—they have, in my mind, no weight in the general tendency of the system.

2.8.60 There are, however, in my opinion, many good things in the proposed system. It is founded on elective principles, and the deposits of powers in different hands, is essentially right. The guards against those evils we have experienced in some states in legislation are valuable indeed; but the value of every feature in this system is vastly lessened for the want of that one important feature in a free government, a representation of the people.[47] Because we have sometimes abused democracy, I am not among those men who think a democratic branch a nuisance; which branch shall be sufficiently numerous, to admit some of the best informed men of each order in the community into the administration of government.

2.8.61 While the radical defects in the proposed system are not so soon discovered, some temptations to each state, and to many classes of men to adopt it, are very visible. It uses the democratic language of several of the state constitutions, particularly that of Massachusetts; the eastern states will receive advantages so far as the regulation of trade, by a bare majority, is committed to it: Connecticut and New-Jersey will receive their share of a general impost: The middle states will receive the advantages surrounding the seat of government: The southern states will receive protection, and have their negroes represented in the legislature, and large back countries will soon have a majority in it. This system promises a large field of employment to military gentlemen, and gentlemen of the law; and in case the government shall be executed without convulsions, it will afford security to creditors, to the clergy, salary-men and others depending on money payments. So far as the system promises justice and reasonable advantages, in these respects, it ought to be supported by all honest men: but whenever it promises unequal and improper advantages to any particular states, or orders of men, it ought to be opposed.

2.8.62 I have, in the course of these letters observed, that there are many good things in the proposed constitution, and I have endeavoured to point out many important defects in it. I have admitted that we want a federal system—that we have a system presented, which, with several alterations may be made a tolerable good one—I have admitted there is a well founded uneasiness among creditors and mercantile men. In this situation of things, you ask me what I think ought to be done? My opinion in this case is only the opinion of an individual, and so far only as it corresponds with the opinions of the honest and substantial part of the community, is it entitled to consideration. Though I am fully satisfied that the state conventions ought most seriously to direct their exertions to altering and amending the system proposed before they shall adopt it—yet I have not sufficiently examined the subject, or formed an opinion, how far it will be practicable for those con-

ventions to carry their amendments. As to the idea, that it will be in vain for those conventions to attempt amendments, it cannot be admitted; it is impossible to say whether they can or not until the attempt shall be made; and when it shall be determined, by experience, that the conventions cannot agree in amendments, it will then be an important question before the people of the United States, whether they will adopt or not the system proposed in its present form. This subject of consolidating the states is new; and because forty or fifty men have agreed in a system, to suppose the good sense of this country, an enlightened nation, must adopt it without examination, and though in a state of profound peace, without endeavouring to amend those parts they perceive are defective, dangerous to freedom, and destructive of the valuable principles of republican government—is truly humiliating. It is true there may be danger in delay; but there is danger in adopting the system in its present form; and I see the danger in either case will arise principally from the conduct and views of two very unprincipled parties in the United States—two fires, between which the honest and substantial people have long found themselves situated. One party is composed of little insurgents, men in debt, who want no law, and who want a share of the property of others; these are called levellers, Shayites, etc. The other party is composed of a few, but more dangerous men, with their servile dependents; these avariciously grasp at all power and property; you may discover in all the actions of these men, an evident dislike to free and equal government, and they will go systematically to work to change, essentially, the forms of government in this country; these are called aristocrats, M[onarch]ites [?], etc. etc. Between these two parties is the weight of the community; the men of middling property, men not in debt on the one hand, and men, on the other, content with republican governments, and not aiming at immense fortunes, offices, and power. In 1786, the little insurgents, the levellers, came forth, invaded the rights of others, and attempted to establish governments according to their wills. Their movements evidently gave encouragement to the other party, which, in 1787, has taken the political field, and with its fashionable dependants, and the tongue and the pen, is endeavouring to establish in great haste, a politer kind of government. These two parties, which will probably be opposed or united as it may suit their interests and views, are really insignificant, compared with the solid, free, and independent part of the community. It is not my intention to suggest, that either of these parties, and the real friends of the proposed constitution, are the same men. The fact is, these aristocrats support and hasten the adoption of the proposed constitution, merely because they think it is a stepping stone to their favorite object. I think I am well founded in this idea; I think the general politics of these men support it, as well as the common observation among them, That the proffered plan is the best that can be got at present, it will do for a few years, and lead to something better. The sensible and judicious part of the community will carefully weigh all these circum-

stances; they will view the late convention as a respectable assembly of men—America probably never will see an assembly of men of a like number, more respectable. But the members of the convention met without knowing the sentiments of one man in ten thousand in these states, respecting the new ground taken. Their doings are but the first attempts in the most important scene ever opened. Though each individual in the state conventions will not, probably, be so respectable as each individual in the federal convention, yet as the state conventions will probably consist of fifteen hundred or two thousand men of abilities, and versed in the science of government, collected from all parts of the community and from all orders of men, it must be acknowledged that the weight of respectability will be in them—In them will be collected the solid sense and the real political character of the country. Being revisers of the subject, they will possess peculiar advantages. To say that these conventions ought not to attempt, coolly and deliberately, the revision of the system, or that they cannot amend it, is very foolish or very assuming. If these conventions, after examining the system, adopt it, I shall be perfectly satisfied, and wish to see men make the administration of the government an equal blessing to all orders of men. I believe the great body of our people to be virtuous and friendly to good government, to the protection of liberty and property; and it is the duty of all good men, especially of those who are placed as centinels to guard their rights—it is their duty to examine into the prevailing politics of parties, and to disclose them—while they avoid exciting undue suspicions, to lay facts before the people, which will enable them to form a proper judgment. Men who wish the people of this country to determine for themselves, and deliberately to fit the government to their situation, must feel some degree of indignation at those attempts to hurry the adoption of a system, and to shut the door against examination. The very attempts create suspicions, that those who make them have secret views, or see some defects in the system, which, in the hurry of affairs, they expect will escape thee ye of a free people.

2.8.63 What can be the views of those gentlemen in Pennsylvania, who precipitated decisions on this subject?[48] What can be the views of those gentlemen in Boston, who countenanced the Printers in shutting up the press against a fair and free investigation of this important system in the usual way.[49] The members of the convention have done their duty—why should some of them fly to their states—almost forget a propriety of behaviour, and precipitate measures for the adoption of a system of their own making? I confess candidly, when I consider these circumstances in connection with the unguarded parts of the system I have mentioned, I feel disposed to proceed with very great caution, and to pay more attention than usual to the conduct of particular characters. If the constitution presented be a good one, it will stand the test with a well informed people: all are agreed there

shall be state conventions to examine it; and we must believe it will be adopted, unless we suppose it is a bad one, or that those conventions will make false divisions respecting it. I admit improper measures are taken against the adoption of the system as well [as] for it—all who object to the plan proposed ought to point out the defects objected to, and to propose those amendments with which they can accept it, or to propose some other system of government, that the public mind may be known, and that we may be brought to agree in some system of government, to strengthen and execute the present, or to provide a substitute. I consider the field of enquiry just opened, and that we are to look to the state conventions for ultimate decisions on the subject before us; it is not to be presumed, that they will differ about small amendments, and lose a system when they shall have made it substantially good; but touching the essential amendments, it is to be presumed the several conventions will pursue the most rational measures to agree in and obtain them; and such defects as they shall discover and not remove, they will probably notice, keep them in view as the ground work of future amendments, and in the firm and manly language which every free people ought to use, will suggest to those who may hereafter administer the government, that it is their expectation, that the system will be so organized by legislative acts, and the government so administered, as to render those defects as little injurious as possible. Our countrymen are entitled to an honest and faithful government; to a government of laws and not of men; and also to one of their chusing—as a citizen of the country, I wish to see these objects secured, and licentious, assuming, and overbearing men restrained; if the constitution or social compact be vague and unguarded, then we depend wholly upon the prudence, wisdom and moderation of those who manage the affairs of government; or on what, probably, is equally uncertain and precarious, the success of the people oppressed by the abuse of government, in receiving it from the hands of those who abuse it, and placing it in the hands of those who will use it well.

In every point of view, therefore, in which I have been able, as yet, to 2.8.64
contemplate this subject, I can discern but one rational mode of proceeding relative to it: and that is to examine it with freedom and candour, to have state conventions some months hence, which shall examine coolly every article, clause, and word in the system proposed, and to adopt it with such amendments as they shall think fit. How far the state conventions ought to pursue the mode prescribed by the federal convention of adopting or rejecting the plan in toto, I leave it to them to determine. Our examination of the subject hitherto has been rather of a general nature. The republican characters in the several states, who wish to make this plan more adequate to security of liberty and property, and to the duration of the principles of a free government, will, no doubt, collect their opinions to certain points, and accurately define those alterations and amendments they wish; if it shall be

found they essentially disagree in them, the conventions will then be able to determine whether to adopt the plan as it is, or what will be proper to be done.

2.8.65 Under these impressions, and keeping in view the improper and unadvisable lodgment of powers in the general government, organized as it at present is, touching internal taxes, armies and militia, the elections of its own members, causes between citizens of different states, etc. and the want of a more perfect bill of rights, etc. I drop the subject for the present, and when I shall have leisure to revise and correct my ideas respecting it, and to collect into points the opinions of those who wish to make the system more secure and safe, perhaps I may proceed to point out particularly for your consideration, the amendments which ought to be ingrafted into this system, not only in conformity to my own, but the deliberate opinions of others—you will with me perceive, that the objections to the plan proposed may, by a more leisure examination be set in a stronger point of view, especially the important one, that there is no substantial representation of the people provided for in a government in which the most essential powers, even as to the internal police of the country, is proposed to be lodged.

2.8.66 I think the honest and substantial part of the community will wish to see this system altered, permanency and consistency given to the constitution we shall adopt; and therefore they will be anxious to apportion the powers to the features and organization of the government, and to see abuse in the exercise of power more effectually guarded against. It is suggested, that state officers, from interested motives will oppose the constitution presented—I see no reason for this, their places in general will not be effected, but new openings to offices and places of profit must evidently be made by the adoption of the constitution in its present form.

Your's &c.
The Federal Farmer.

[The Additional Letters]

VI

December 25, 1787.

Dear Sir,

2.8.67 My former letters to you, respecting the constitution proposed, were calculated merely to lead to a fuller investigation of the subject; having more extensively considered it, and the opinions of others relative to it, I shall, in a few letters, more particularly endeavour to point out the defects, and

propose amendments. I shall in this make only a few general and introductory observations, which, in the present state of the momentous question, may not be improper; and I leave you, in all cases, to decide by a careful examination of my works, upon the weight of my arguments, the propriety of my remarks, the uprightness of my intentions, and the extent of my candor—I presume I am writing to a man of candor and reflection, and not to an ardent, peevish, or impatient man.

When the constitution was first published, there appeared to prevail a misguided zeal to prevent a fair unbiassed examination of a subject of infinite importance to this people and their posterity—to the cause of liberty and the rights of mankind—and it was the duty of those who saw a restless ardor, or design, attempting to mislead the people by a parade of names and misrepresentations, to endeavour to prevent their having their intended effects. The only way to stop the passions of men in their career is, coolly to state facts, and deliberately to avow the truth—and to do this we are frequently forced into a painful view of men and measures. 2.8.68

Since I wrote to you in October, I have heard much said, and seen many pieces written, upon the subject in question; and on carefully examining them on both sides, I find much less reason for changing my sentiments, respecting the good and defective parts of the system proposed than I expected—The opposers, as well as the advocates of it, confirm me in my opinion, that this system affords, all circumstances considered, a better basis to build upon than the confederation. And as to the principal defects, as the smallness of the representation, the insecurity of elections, the undue mixture of powers in the senate, the insecurity of some essential rights, &c. the opposition appears, generally, to agree respecting them, and many of the ablest advocates virtually to admit them—Clear it is, the latter do not attempt manfully to defend these defective parts, but to cover them with a mysterious veil; they concede, they retract; they say we could do no better; and some of them, when a little out of temper, and hard pushed, use arguments that do more honor to their ingenuity, than to their candor and firmness. 2.8.69

Three states have now adopted the constitution without amendments;[50] these, and other circumstances, ought to have their weight in deciding the question, whether we will put the system into operation, adopt it, enumerate and recommend the necessary amendments, which afterwards, by three-fourths of the states, may be ingrafted into the system, or whether we will make the amendments prior to the adoption—I only undertake to shew amendments are essential and necessary—how far it is practicable to ingraft them into the plan, prior to the adoption, the state conventions must determine. Our situation is critical, and we have but our choice of evils—We may hazard much by adopting the constitution in its present form—we may hazard more by rejecting it wholly—we may hazard much by long contending about amendments prior to the adoption. The greatest political evils that 2.8.70

can befal us, are discords and civil wars—the greatest blessings we can wish for, are peace, union, and industry, under a mild, free, and steady government. Amendments recommended will tend to guard and direct the administration—but there will be danger that the people, after the system shall be adopted, will become inattentive to amendments—Their attention is now awake—the discussion of the subject, which has already taken place, has had a happy effect—it has called forth the able advocates of liberty, and tends to renew, in the minds of the people, their true republican jealousy and vigilance, the strongest guard against the abuses of power; but the vigilance of the people is not sufficiently constant to be depended on—Fortunate it is for the body of a people, if they can continue attentive to their liberties, long enough to erect for them a temple, and constitutional barriers for their permanent security: when they are well fixed between the powers of the rulers and the rights of the people, they become visible boundaries, constantly seen by all, and any transgression of them is immediately discovered: they serve as centinels for the people at all times, and especially in those unavoidable intervals of inattention.

2.8.71 Some of the advocates, I believe, will agree to recommend *good* amendments; but some of them will only consent to recommend indefinite, specious, but unimportant ones; and this only with a view to keep the door open for obtaining, in some favourable moment, their main object, a complete consolidation of the states, and a government much higher toned, less republican and free than the one proposed. If necessity, therefore, should ever oblige us to adopt the system, and recommend amendments, the true friends of a federal republic must see they are well defined, and well calculated, not only to prevent our system of government moving further from republican principles and equality, but to bring it back nearer to them—they must be constantly on their guard against the address, flattery, and manœuvres of their adversaries.

2.8.72 The gentlemen who oppose the constitution, or contend for amendments in it, are frequently, and with much bitterness, charged with wantonly attacking the men who framed it. The unjustness of this charge leads me to make one observation upon the conduct of parties, &c.[51] Some of the advocates are only pretended federalists; in fact they wish for an abolition of the state governments. Some of them I believe to be honest federalists, who wish to preserve *substantially* the state governments united under an efficient federal head; and many of them are blind tools without any object. Some of the opposers also are only pretended federalists, who want no federal government, or one merely advisory. Some of them are the true federalists, their object, perhaps, more clearly seen, is the same with that of the honest federalists; and some of them, probably, have no distinct object. We might as well call the advocates and opposers tories and whigs, or any thing else, as federalists and anti-federalists. To be for or against the constitution, as it stands, is not much evidence of a federal disposition; if any

names are applicable to the parties, on account of their general politics, they are those of republicans and anti-republicans. The opposers are generally men who support the rights of the body of the people, and are properly republicans. The advocates are generally men not very friendly to those rights, and properly anti republicans.

Had the advocates left the constitution, as they ought to have done, to be adopted or rejected on account of its own merits or imperfections, I do not believe the gentlemen who framed it would ever have been even alluded to in the contest by the opposers. Instead of this, the ardent advocates begun by quoting names as incontestible authorities for the implicit adoption of the system, without any examination—treated all who opposed it as friends of anarchy; and with an indecent virulence addressed M[aso]n G[err]y, L[e]e, and almost every man of weight they could find in the opposition by name.[52] If they had been candid men they would have applauded the moderation of the opposers for not retaliating in this pointed manner, when so fair an opportunity was given them; but the opposers generally saw that it was no time to heat the passions; but, at the same time, they saw there was something more than mere zeal in many of their adversaries; they saw them attempting to mislead the people, and to precipitate their divisions, by the sound of names, and forced to do it, the opposers, in general terms, alledged those names were not of sufficient authority to justify the hasty adoption of the system contended for. The convention, as a body, was undoubtedly respectable; it was, generally, composed of members of the then and preceding Congresses: as a body of respectable men we ought to view it. To select individual names, is an invitation to personal attacks, and the advocates, for their own sake, ought to have known the abilities, politics, and situation of some of their favourite characters better, before they held them up to view in the manner they did, as men entitled to our implicit political belief: they ought to have known, whether all the men they so held up to view could, for their past conduct in public offices, be approved or not by the public records, and the honest part of the community. These ardent advocates seem now to be peevish and angry, because, by their own folly, they have led to an investigation of facts and of political characters, unfavourable to them, which they had not the discernment to foresee. They may well apprehend they have opened a door to some Junius,[53] or to some man, after his manner, with his polite addresses to men by name, to state serious facts, and unfold the truth; but these advocates may rest assured, that cool men in the opposition, best acquainted with the affairs of the country, will not, in the critical passage of a people from one constitution to another, pursue inquiries, which, in other circumstances, will be deserving of the highest praise. I will say nothing further about political characters, but examine the constitution; and as a necessary and previous measure to a particular examination, I shall state a few general positions and principles, which receive a general assent, and briefly notice the leading features of the

2.8.73

confederation, and several state conventions, to which, through the whole investigation, we must frequently have recourse, to aid the mind in its determinations.

2.8.74 We can put but little dependance on the partial and vague information transmitted to us respecting antient governments; our situation as a people is peculiar: our people in general have a high sense of freedom; they are high spirited, though capable of deliberate measures; they are intelligent, discerning, and well informed; and it is to their condition we must mould the constitution and laws. We have no royal or noble families, and all things concur in favour of a government entirely elective. We have tried our abilities as free men in a most arduous contest, and have succeeded; but we now find the main spring of our movements were the love of liberty, and a temporary ardor, and not any energetic principle in the federal system.[54]

2.8.75 Our territories are far too extensive for a limited monarchy, in which the representatives must frequently assemble, and the laws operate mildly and systematically. The most elligible system is a federal republic, that is, a system in which national concerns may be transacted in the centre, and local affairs in state or district governments.

The powers of the union ought to be extended to commerce, the coin, and national objects; and a division of powers, and a deposit of them in different hands, is safest.

2.8.76 Good government is generally the result of experience and gradual improvements, and a punctual execution of the laws is essential to the preservation of life, liberty, and property. Taxes are always necessary, and the power to raise them can never be safely lodged without checks and limitation, but in a full and substantial representation of the body of the people; the quantity of power delegated ought to be compensated by the brevity of the time of holding it, in order to prevent the possessors increasing it. The supreme power is in the people, and rulers possess only that portion which is expressly given them; yet the wisest people have often declared this is the case on proper occasions, and have carefully formed stipulation to fix the extent, and limit the exercise of the power given.

2.8.77 The people by Magna Charta, &c. did not acquire powers, or receive privileges from the king, they only ascertained and fixed those they were entitled to as Englishmen; the title used by the king "we grant," was mere form. Representation, and the jury trial, are the best features of a free government ever as yet discovered, and the only means by which the body of the people can have their proper influence in the affairs of government.

2.8.78 In a federal system we must not only balance the parts of the same government, as that of the state, or that of the union; but we must find a balancing influence between the general and local governments—the latter is what men or writers have but very little or imperfectly considered.

2.8.79 A free and mild government is that in which no laws can be made without the formal and free consent of the people, or of their constitutional repre-

sentatives; that is, of a substantial representative branch. Liberty, in its genuine sense, is security to enjoy the effects of our honest industry and labours, in a free and mild government, and personal security from all illegal restraints.

Of rights, some are natural and unalienable, of which even the people cannot deprive individuals: Some are constitutional or fundamental; these cannot be altered or abolished by the ordinary laws; but the people, by express acts, may alter or abolish them—These, such as the trial by jury, the benefits of the writ of habeas corpus, &c. individuals claim under the solemn compacts of the people, as constitutions, or at least under laws so strengthened by long usuage as not to be repealable by the ordinary legislature—and some are common or mere legal rights, that is, such as individuals claim under laws which the ordinary legislature may alter or abolish at pleasure.[55] 2.8.80

The confederation is a league of friendship among the states or sovereignties for the common defence and mutual welfare—Each state expressly retains its sovereignty, and all powers not expressly given to congress—All federal powers are lodged in a congress of delegates annually elected by the state legislatures, except in Connecticut and Rhode-Island, where they are chosen by the people—Each state has a vote in congress, pays its delegates, and may instruct or recall them; no delegate can hold any office of profit, or serve more than three years in any six years—Each state may be represented by not less than two, or more than seven delegates. 2.8.81

Congress (nine states agreeing) may make peace and war, treaties and alliances, grant letters of marque and reprisal, coin money, regulate the alloy and value of the coin, require men and monies of the states by fixed proportions, and appropriate monies, form armies and navies, emit bills of credit, and borrow monies. 2.8.82

Congress (seven states agreeing) may send and receive ambassadors, regulate captures, make rules for governing the army and navy, institute courts for the trial of piracies and felonies committed on the high seas, and for settling territorial disputes between the individual states, regulate weight and measures, post-offices, and Indian affairs. 2.8.83

No state, without the consent of congress, can send or receive embassies, make any agreement with any other state, or a foreign state, keep up any vessels of war or bodies of forces in time of peace, or engage in war, or lay any duties which may interfere with the treaties of congress—Each state must appoint regimental officers, and keep up a well regulated militia—Each state may prohibit the importation or exportation of any species of goods. 2.8.84

The free inhabitants of one state are intitled to the privileges and immunities of the free citizens of the other states—Credit in each state shall be given to the records and judicial proceedings in the others. 2.8.85

Canada, acceding, may be admitted, and any other colony may be admitted by the consent of nine states.

Alterations may be made by the agreement of congress, and confirmation of all the state legislatures.

2.8.86 The following, I think, will be allowed to be unalienable or fundamental rights in the United States:—

No man, demeaning himself peaceably, shall be molested on account of his religion or mode of worship—The people have a right to hold and enjoy their property according to known standing laws, and which cannot be taken from them without their consent, or the consent of their representatives; and whenever taken in the pressing urgencies of government, they are to receive a reasonable compensation for it—Individual security consists in having free recourse to the laws—The people are subject to no laws or taxes not assented to by their representatives constitutionally assembled—They are at all times intitled to the benefits of the writ of habeas corpus, the trial by jury in criminal and civil causes—They have a right, when charged, to a speedy trial in the vicinage; to be heard by themselves or counsel, not to be compelled to furnish evidence against themselves, to have witnesses face to face, and to confront their adversaries before the judge—No man is held to answer a crime charged upon him till it be substantially described to him; and he is subject to no unreasonable searches or seizures of his person, papers or effects—The people have a right to assemble in an orderly manner, and petition the government for a redress of wrongs—The freedom of the press ought not to be restrained—No emoluments, except for actual service—No hereditary honors, or orders of nobility, ought to be allowed—The military ought to be subordinate to the civil authority, and no soldier be quartered on the citizens without their consent—The militia ought always to be armed and disciplined, and the usual defence of the country—The supreme power is in the people, and power delegated ought to return to them at stated periods, and frequently—The legislative, executive, and judicial powers, ought always to be kept distinct—others perhaps might be added.

2.8.87 The organization of the state governments—Each state has a legislature, an executive, and a judicial branch—In general legislators are excluded from the important executive and judicial offices—Except in the Carolinas there is no constitutional distinction among Christian sects—The constitutions of New York, Delaware, and Virginia, exclude the clergy from offices civil and military—the other states do nearly the same in practice.

2.8.88 Each state has a democratic branch elected twice a-year in Rhode-Island and Connecticut, biennially in South Carolina, and annually in the other states—There are about 1500 representatives in all the states, or one to each 1700 inhabitants, reckoning five blacks for three whites—The states do not differ as to the age or moral characters of the electors or elected, nor materially as to their property.

2.8.89 Pennsylvania has lodged all her legislative powers in a single branch, and Georgia has done the same; the other eleven states have each in their legis-

latures a second or senatorial branch. In forming this they have combined various principles, and aimed at several checks and balances. It is amazing to see how ingenuity has worked in the several states to fix a barrier against popular instability. In Massachusetts the senators are apportioned on districts according to the taxes they pay, nearly according to property. In Connecticut the freemen, in September, vote for twenty counsellers, and return the names of those voted for in the several towns; the legislature takes the twenty who have the most votes, and give them to the people, who, in April, chuse twelve of them, who, with the governor and deputy governor, form the senatorial branch. In Maryland the senators are chosen by two electors from each county; these electors are chosen by the freemen, and qualified as the members in the democratic branch are: In these two cases checks are aimed at in the mode of election. Several states have taken into view the periods of service, age, property, &c. In South-Carolina a senator is elected for two years, in Delaware three, and in New-York and Virginia four, in Maryland five, and in the other states for one. In New-York and Virginia one-fourth part go out yearly. In Virginia a senator must be twenty-five years old, in South Carolina thirty. In New-York the electors must each have a freehold worth 250 dollars, in North-Carolina a freehold of fifty acres of land; in the other states the electors of senators are qualified as electors of representatives are. In Massachusetts a senator must have a freehold in his own right worth 1000 dollars, or any estate worth 2000, in New-Jersey any estate worth 2666, in South Carolina worth 1300 dollars, in North-Carolina 300 acres of land in fee, &c. The numbers of senators in each state are from ten to thirty-one, about 160 in the eleven states, about one of 14000 inhabitants.

Two states, Massachusetts and New-York, have each introduced into their legislatures a third, but incomplete branch. In the former, the governor may negative any law not supported by two-thirds of the senators, and two-thirds of the representatives: in the latter, the governor, chancellor, and judges of the supreme court may do the same. 2.8.90

Each state has a single executive branch. In the five eastern states the people at large elect their governors; in the other states the legislatures elect them. In South Carolina the governor is elected once in two years; in New-York and Delaware once in three, and in the other states annually. The governor of New-York has no executive council, the other governors have. In several states the governor has a vote in the senatorial branch—the governors have similar powers in some instances, and quite dissimilar ones in others. The number of executive counsellers in the states are from five to twelve. In the four eastern states, New-Jersey, Pennsylvania, and Georgia, they are of the men returned legislators by the people. In Pennsylvania the counsellers are chosen triennially, in Delaware every fourth year, in Virginia every three years, in South-Carolina biennially, and in the other states yearly. 2.8.91

2.9.92 Each state has a judicial branch; each common law courts, superior and inferior; some chancery and admiralty courts: The courts in general sit in different places, in order to accommodate the citizens. The trial by jury is had in all the common law courts, and in some of the admiralty courts. The democratic freemen principally form the juries; men destitute of property, of character, or under age, are excluded as in elections. Some of the judges are during good behaviour, and some appointed for a year, and some for years; and all are dependant on the legislatures for their salaries—Particulars respecting this department are too many to be noticed here.

The Federal Farmer.

VII

December 31, 1787.

Dear Sir.

2.8.93 In viewing the various governments instituted by mankind, we see their whole force reducible to two principles—the important springs which alone move the machines, and give them their intended influence and controul, are force and persuasion: by the former men are compelled, by the latter they are drawn. We denominate a government despotic or free, as the one or other principle prevails in it. Perhaps it is not possible for a government to be so despotic, as not to operate persuasively on some of its subjects; nor is it, in the nature of things, I conceive, for a government to be so free, or so supported by voluntary consent, as never to want force to compel obedience to the laws. In despotic governments one man, or a few men, independant of the people, generally make the laws, command obedience, and inforce it by the sword: one-fourth part of the people are armed, and obliged to endure the fatigues of soldiers, to oppress the others and keep them subject to the laws. In free governments the people, or their representatives, make the laws; their execution is principally the effect of voluntary consent and aid; the people respect the magistrate, follow their private pursuits, and enjoy the fruits of their labour with very small deductions for the public use.[56] The body of the people must evidently prefer the latter species of government; and it can be only those few who may be well paid for the part they take in enforcing despotism, that can, for a moment, prefer the former. Our true object is to give full efficacy to one principle, to arm persuasion on every side, and to render force as little necessary as possible. Persuasion is never dangerous not even in despotic governments; but military force, if often applied internally, can never fail to destroy the love and confidence, and break the spirits, of the people: and to render it totally impracticable

and unnatural for him or them who govern, and yield to this force against the people, to hold their places by the peoples' elections.

I repeat my observation, that the plan proposed will have a doubtful operation between the two principles; and whether it will preponderate towards persuasion or force is uncertain.

Government must exist—If the persuasive principle be feeble, force is infallibly the next resort. The moment the laws of congress shall be disregarded they must languish, and the whole system be convulsed—that moment we must have recourse to this next resort, and all freedom vanish. 2.8.94

It being impracticable for the people to assemble to make laws, they must elect legislators, and assign men to the different departments of the government.[57] In the representative branch we must expect chiefly to collect the confidence of the people, and in it to find almost entirely the force of persuasion. In forming this branch, therefore, several important considerations must be attended to. It must possess abilities to discern the situation of the people and of public affairs, a disposition to sympathize with the people, and a capacity and inclination to make laws congenial to their circumstances and condition: it must afford security against interested combinations, corruption and influence; it must possess the confidence, and have the voluntary support of the people. 2.8.95

I think these positions will not be controverted, nor the one I formerly advanced, that a fair and equal representation is that in which the interests, feelings, opinions and views of the people are collected, in such manner as they would be were the people all assembled. Having made these general observations, I shall proceed to consider further my principal position, viz. that there is no substantial representation of the people provided for in a government, in which the most essential powers, even as to the internal police of the country, are proposed to be lodged; and to propose certain amendments as to the representative branch: 1st, That there ought to be *an increase of the numbers of representatives:* And, 2dly, That the elections of them ought to be better secured. 2.8.96

1.[58] The representation is unsubstantial and ought to be increased. In matters where there is much room for opinion, you will not expect me to establish my positions with mathematical certainty; you must only expect my observations to be candid, and such as are well founded in the mind of the writer. I am in a field where doctors disagree; and as to genuine representation, though no feature in government can be more important, perhaps, no one has been less understood, and no one that has received so imperfect a consideration by political writers. The ephori in Sparta, and the tribunes in Rome, were but the shadow; the representation in Great-Britain is unequal and insecure. In America we have done more in establishing this important branch on its true principles, than, perhaps, all the world besides: yet even here, I conceive, that very great improvements in representation may be made. In fixing this branch, the situation of the people must be surveyed, 2.8.97

and the number of representatives and forms of election apportioned to that situation. When we find a numerous people settled in a fertile and extensive country, possessing equality, and few or none of them oppressed with riches or wants, it ought to be the anxious care of the constitution and laws, to arrest them from national depravity, and to preserve them in their happy condition.[59] A virtuous people make just laws, and good laws tend to preserve unchanged a virtuous people. A virtuous and happy people by laws uncongenial to their characters, may easily be gradually changed into servile and depraved creatures. Where the people, or their representatives, make the laws, it is probable they will generally be fitted to the national character and circumstances, unless the representation be partial, and the imperfect substitute of the people. However, the people may be electors, if the representation be so formed as to give one or more of the natural classes of men in the society an undue ascendency over the others, it is imperfect; the former will gradually become masters, and the latter slaves. It is the first of all among the political balances, to preserve in its proper station each of these classes. We talk of balances in the legislature, and among the departments of government; we ought to carry them to the body of the people. Since I advanced the idea of balancing the several orders of men in a community, in forming a genuine representation, and seen that idea considered as chemerical,[60] I have been sensibly struck with a sentence in the marquis Beccaria's treatise: this sentence was quoted by congress in 1774, and is as follows:—"In every society there is an effort continually tending to confer on one part the height of power and happiness, and to reduce the others to the extreme of weakness and misery; the intent of good laws is to oppose this effort, and to diffuse their influence universally and equally."[61] Add to this Montesquieu's opinion, that "in a free state every man, who is supposed to be a free agent, ought to be concerned in his own government: therefore, the legislative should reside in the whole body of the people, or their representatives."[62] It is extremely clear that these writers had in view the several orders of men in society, which we call aristocratical, democratical, merchantile, mechanic, &c. and perceived the efforts they are constantly, from interested and ambitious views, disposed to make [efforts?] to elevate themselves and oppress others. Each order must have a share in the business of legislation actually and efficiently. It is deceiving a people to tell them they are electors, and can chuse their legislators, if they cannot, in the nature of things, chuse men from among themselves, and genuinely like themselves. I wish you to take another idea along with you; we are not only to balance these natural efforts, but we are also to guard against accidental combinations; combinations founded in the connections of offices and private interests, both evils which are increased in proportion as the number of men, among which the elected must be, are decreased. To set this matter in a proper point of view, we must form some general ideas and descriptions of the different classes of men, as they may be divided by

occupations and politically: the first class is the aristocratical. There are three kinds of aristocracy spoken of in this country—the first is a constitutional one, which does not exist in the United States in our common acceptation of the word. Montesquieu, it is true, observes, that where a part of the persons in a society, for want of property, age, or moral character, are excluded any share in the government, the others, who alone are the constitutional electors and elected, form this aristocracy;[63] this, according to him, exists in each of the United States, where a considerable number of persons, as all convicted of crimes, under age, or not possessed of certain property, are excluded any share in the government;—the second is an aristocratic faction; a junto of unprincipled men, often distinguished for their wealth or abilities, who combine together and make their object their private interests and aggrandizement; the existence of this description is merely accidental, but particularly to be guarded against. The third is the natural aristocracy; this term we use to designate a respectable order of men, the line between whom and the natural democracy is in some degree arbitrary; we may place men on one side of this line, which others may place on the other, and in all disputes between the few and the many, a considerable number are wavering and uncertain themselves on which side they are, or ought to be. In my idea of our natural aristocracy in the United States, I include about four or five thousand men; and among these I reckon those who have been placed in the offices of governors, of members of Congress, and state senators generally, in the principal officers of Congress, of the army and militia, the superior judges, the most eminent professional men, &c. and men of large property[64]—the other persons and orders in the community form the natural democracy; this includes in general the yeomanry, the subordinate officers, civil and military, the fishermen, mechanics and traders, many of the merchants and professional men. It is easy to perceive that men of these two classes, the aristocratical, and democratical, with views equally honest, have sentiments widely different, especially respecting public and private expences, salaries, taxes, &c. Men of the first class associate more extensively, have a high sense of honor, possess abilities, ambition, and general knowledge; men of the second class are not so much used to combining great objects; they possess less ambition, and a larger share of honesty: their dependence is principally on middling and small estates, industrious pursuits, and hard labour, while that of the former is principally on the emoluments of large estates, and of the chief offices of government. Not only the efforts of these two great parties are to be balanced, but other interests and parties also, which do not always oppress each other merely for want of power, and for fear of the consequences; though they, in fact, mutually depend on each other; yet such are their general views, that the merchants alone would never fail to make laws favourable to themselves and oppressive to the farmers, &c. the farmers alone would act on like principles; the former would tax the land, the latter

the trade. The manufacturers are often disposed to contend for monopolies, buyers make every exertion to lower prices, and sellers to raise them; men who live by fees and salaries endeavour to raise them, and the part of the people who pay them, endeavour to lower them; the public creditors to augment the taxes, and the people at large to lessen them. Thus, in every period of society, and in all the transactions of men, we see parties verifying the observation made by the Marquis; and those classes which have not their centinels in the government, in proportion to what they have to gain or lose, most infallibly be ruined.

2.8.98 Efforts among parties are not merely confined to property; they contend for rank and distinctions; all their passions in turn are enlisted in political controversies—Men, elevated in society, are often disgusted with the changeableness of the democracy, and the latter are often agitated with the passions of jealousy and envy: the yeomanry possess a large share of property and strength, are nervous and firm in their opinions and habits—the mechanics of towns are ardent and changeable, honest and credulous, they are inconsiderable for numbers, weight and strength, not always sufficiently stable for the supporting free governments: the fishing interest partakes partly of the strength and stability of the landed, and partly of the changeableness of the mechanic interest. As to merchants and traders, they are our agents in almost all money transactions; give activity to government, and possess a considerable share of influence in it. It has been observed by an able writer, that frugal industrious merchants are generally advocates for liberty. It is an observation, I believe, well founded, that the schools produce but few advocates for republican forms of government; [65] gentlemen of the law, divinity, physic, &c. probably form about a fourth part of the people; yet their political influence, perhaps, is equal to that of all the other descriptions of men; if we may judge from the appointments to Congress, the legal characters will often, in a small representation, be the majority; but the more the representatives are encreased, the more of the farmers, merchants, &c. will be found to be brought into the government.

2.8.99 These general observations will enable you to discern what I intend by different classes, and the general scope of my ideas, when I contend for uniting and balancing their interests, feelings, opinions, and views in the legislature; we may not only so unite and balance these as to prevent a change in the government by the gradual exaltation of one part to the depression of others, but we may derive many other advantages from the combination and full representation; a small representation can never be well informed as to the circumstances of the people, the members of it must be too far removed from the people, in general, to sympathize with them, and too few to communicate with them: a representation must be extremely imperfect where the representatives are not circumstanced to make the proper communications to their constituents, and where the constituents in

turn cannot, with tolerable convenience, make known their wants, circumstances, and opinions, to their representatives; where there is but one representative to 30,000 or 40,000 inhabitants, it appears to me, he can only mix, and be acquainted with a few respectable characters among his constituents, even double the federal representation, and then there must be a very great distance between the representatives and the people in general represented. On the proposed plan, the state of Delaware, the city of Philadelphia, the state of Rhode Island, the province of Main, the county of Suffolk in Massachusetts will have one representative each; there can be but little personal knowledge, or but few communications, between him and the people at large of either of those districts. It has been observed, that mixing only with the respectable men, he will get the best information and ideas from them; he will also receive impressions favourable to their purposes particularly. Many plausible shifts have been made to divert the mind from dwelling on this defective representation, these I shall consider in another place.[66]

Could we get over all our difficulties respecting a balance of interests and party efforts, to raise some and oppress others, the want of sympathy, information and intercourse between the representatives and the people, an insuperable difficulty will still remain, I mean the constant liability of a small number of representatives to private combinations; the tyranny of the one, or the licentiousness of the multitude, are, in my mind, but small evils, compared with the factions of the few. It is a consideration well worth pursuing, how far this house of representatives will be liable to be formed into private juntos, how far influenced by expectations of appointments and offices, how far liable to be managed by the president and senate, and how far the people will have confidence in them. To obviate difficulties on this head, as well as objections to the representative branch, generally, several observations have been made—these I will now examine, and if they shall appear to be unfounded, the objections must stand unanswered. 2.8.100

That the people are the electors, must elect good men, and attend to the administration. 2.8.101

It is said that the members of Congress, at stated periods, must return home, and that they must be subject to the laws they may make, and to a share of the burdens they may impose.

That the people possess the strong arm to overawe their rulers, and the best checks in their national character against the abuses of power, that the supreme power will remain in them.

That the state governments will form a part of, and a balance in the system.

That Congress will have only a few national objects to attend to, and the state governments many and local ones.

That the new Congress will be more numerous than the present, and that any numerous body is unwieldy and mobbish.

That the states only are represented in the present Congress, and that the people will require a representation in the new one that in fifty or an hundred years the representation will be numerous.

That congress will have no temptation to do wrong; and that no system to enslave the people is practicable.

That as long as the people are free they will preserve free governments; and that when they shall become tired of freedom, arbitrary government must take place.

These observations I shall examine in the course of my letters; and, I think, not only shew that they are not well founded, but point out the fallacy of some of them; and shew that others do not very well comport with the dignified and manly sentiments of a free and enlightened people.

The Federal Farmer.

VIII

January 3, 1788.

Dear Sir,

2.8.102 Before I proceed to examine the objections, I beg leave to add a valuable idea respecting representation, to be collected from De Lome, and other able writers, which essentially tends to confirm my positions: They very justly impute the establishment of general and equal liberty in England to a balance of interests and powers among the different orders of men; aided by a series of fortunate events, that never before, and possibly never again will happen.[67]

2.8.103 Before the Norman conquest the people of England enjoyed much of this liberty. The first of the Norman kings, aided by foreign mercenaries and foreign attendants, obnoxious to the English, immediately laid arbitrary taxes, and established arbitrary courts, and severely oppress[ed] all orders of people: The barons and people, who recollected their former liberties, were induced, by those oppressions, to unite their efforts in their common defence: Here it became necessary for the great men, instead of deceiving and depressing the people, to enlighten and court them; the royal power was too strongly fixed to be annihilated, and rational means were, therefore directed to limiting it within proper bounds. In this long and arduous task, in this new species of contests, the barons and people succeeded, because they had been freemen, and knew the value of the object they were contending for; because they were the people of a small island—one people who found it practicable to meet and deliberate in one assembly, and act under one system of resolves, and who were not obliged to meet in different provincial

assemblies, as is the case in large countries, as was the case in France, Spain, &c. where their determinations were inconsistent with each other, and where the king could play off one assembly against another.

2.8.104 It was in this united situation the people of England were for several centuries, enabled to combine their exertions, and by compacts, as Magna Charta, a bill of rights, &c. were able to limit, by degrees, the royal prerogatives, and establish their own liberties. The first combination was, probably, the accidental effect of pre-existing circumstances; but there was an admirable balance of interests in it, which has been the parent of English liberty, and excellent regulations enjoyed since that time. The executive power having been uniformly in the king, and he the visible head of the nation, it was chimerical for the greatest lord or most popular leader, consistent with the state of the government, and opinion of the people, to seriously think of becoming the king's rival, or to aim at even a share of the executive power; the greatest subject's prospect was only in acquiring a respectable influence in the house of commons, house of lords, or in the ministry; circumstances at once made it the interests of the leaders of the people to stand by them. Far otherwise was it with the ephori in Sparta, and tribunes in Rome. The leaders in England have led the people to freedom, in almost all other countries to servitude. The people in England have made use of deliberate exertions, their safest and most efficient weapons. In other countries they have often acted like mobs, and been enslaved by their enemies, or by their own leaders. In England, the people have been led uniformly, and systematically by their representatives to secure their rights by compact, and to abolish innovations upon the government: they successively obtained Magna Charta, the powers of taxation, the power to propose laws, the habeas corpus act, bill of rights, &c. they, in short, secured general and equal liberty, security to their persons and property; and, as an everlasting security and bulwark of their liberties, they fixed the democratic branch in the legislature, and jury trial in the execution of the laws, the freedom of the press, etc.

2.8.105 In Rome, and most other countries, the reverse of all this is true. In Greece, Rome, and wherever the civil law has been adopted, torture has been admitted. In Rome the people were subject to arbitrary confiscations, and even their lives would be arbitrarily disposed of by consuls, tribunes, dictators, masters, &c. half of the inhabitants were slaves, and the other half never knew what equal liberty was; yet in England the people have had king, lords, and commons; in Rome they had consuls, senators and tribunes: why then was the government of England so mild and favorable to the body of the people, and that of Rome an ambitious and oppressive aristocracy? Why in England have the revolutions always ended in stipulations in favour of general liberty, equal laws, and the common rights of the people and in most other countries in favour only of a few influential men? The reasons, in

my mind, are obvious: In England the people have been substantially represented in many respects; in the other countries it has not been so. Perhaps a small degree of attention to a few simple facts will illustrate this.—In England, from the oppressions of the Norman kings to the revolution in 1688, during which period of two or three hundred years, the English liberties were ascertained and established, the aristocratic part of that nation was substantially represented by a very large number of nobles, possessing similar interests and feelings with those they represented. The body of the people, about four or five millions, then mostly a frugal landed people, were represented by about five hundred representatives, taken not from the order of men which formed the aristocracy, but from the body of the people, and possessed of the same interests and feelings. De Lome, speaking of the British representation, expressly founds all his reasons on this union; this similitude of interests, feelings, views and circumstances. He observes, the English have preserved their liberties, because they and their leaders or representatives have been strictly united in interests, and in contending for general liberty.[68] Here we see a genuine balance founded in the actual state of things. The whole community, probably, not more than two-fifths more numerous than we now are, were represented by seven or eight hundred men; the barons stipulated with the common people, and the king with the whole. Had the legal distinction between lords and commons been broken down, and the people of that island been called upon to elect forty-five senators, and one hundred and twenty representatives, about the proportion we propose to establish, their whole legislature evidently would have been of the natural aristocracy, and the body of the people would not have had scarcely a single sincere advocate; their interests would have been neglected, general and equal liberty forgot, and the balance lost; contests and conciliations, as in most other countries, would have been merely among the few, and as it might have been necessary to serve their purposes, the people at large would have been flattered or threatened, and probably not a single stipulation made in their favour.

2.8.106 In Rome the people were miserable, though they had three orders, the consuls, senators and tribunes, and approved the laws, and all for want of a genuine representation. The people were too numerous to assemble, and do any thing properly themselves; the voice of a few, the dupes of artifice, was called the voice of the people. It is difficult for the people to defend themselves against the arts and intrigues of the great, but by selecting a suitable number of men fixed to their interests to represent them, and to oppose ministers and senators. And the people's all depends on the number of the men selected, and the manner of doing it. To be convinced of this, we need only attend to the reason of the case, the conduct of the British commons, and of the Roman tribunes: equal liberty prevails in England, because there was a representation of the people, in fact and reality, to establish it; equal

liberty never prevailed in Rome, because there was but the shadow of a representation. There were consuls in Rome annually elected to execute the laws; several hundred senators represented the great families; the body of the people annually chose tribunes from among themselves to defend them and to secure their rights; I think the number of tribunes annually chosen never exceeded ten. This representation, perhaps, was not proportionally so numerous as the representation proposed in the new plan; but the difference will not appear to be so great, when it shall be recollected, that these tribunes were chosen annually; that the great patrician families were not admitted to these offices of tribunes, and that the people of Italy who elected the tribunes were a long while, if not always, a small people compared with the people of the United States. What was the consequence of this triffling representation? The people of Rome always elected for their tribunes men conspicuous for their riches, military commands, professional popularity, &c. great commoners, between whom and the noble families there was only the shadowy difference of legal distinction. Among all the tribunes the people chose for several centuries, they had scarcely five real friends to their interests. These tribunes lived, felt and saw, not like the people, but like the great patrician families, like senators and great officers of state, to get into which it was evident, by their conduct, was their sole object. These tribunes often talked about the rights and prerogatives of the people, and that was all; for they never even attempted to establish equal liberty: so far from establishing the rights of the people, they suffered the senate, to the exclusion of the people, to engross the powers of taxation; those excellent and almost only real weapons of defence even the people of England possess. The tribunes obtained that the people should be eligible to some of the great offices of state, and marry, if they pleased, into the noble families; these were advantages in their nature, confined to a few elevated commoners, and of triffling importance to the people at large. Nearly the same observations may be made as to the ephori of Sparta.

We may amuse ourselves with names; but the fact is, men will be gov- 2.8.107
erned by the motives and temptations that surround their situation. Political evils to be guarded against are in the human character, and not in the name of patrician or plebian. Had the people of Italy, in the early period of the republic, selected yearly, or biennially, four or five hundred of their best informed men, emphatically from among themselves, these representatives would have formed an honest respectable assembly, capable of combining in them the views and exertions of the people, and their respectability would have procured them honest and able leaders, and we should have seen equal liberty established. True liberty stands in need of a fostering hand; from the days of Adam she has found but one temple to dwell in securely; she has laid the foundation of one, perhaps her last, in America; whether this is to be compleated and have duration, is yet a question. Equal liberty never yet

found many advocates among the great: it is a disagreeable truth, that power perverts mens views in a greater degree, than public employments inform their understandings—they become hardened in certain maxims, and more lost to fellow feelings. Men may always be too cautious to commit alarming and glaring iniquities; but they, as well as systems, are liable to be corrupted by slow degrees. Junius well observes, we are not only to guard against what men will do, but even against what they may do.[69] Men in high public offices are in stations where they gradually lose sight of the people, and do not often think of attending to them, except when necessary to answer private purposes.

2.8.108 The body of the people must have this true representative security placed some where in the nation; and in the United States, or in any extended empire, I am fully persuaded can be placed no where, but in the forms of a federal republic, where we can divide and place it in several state or district legislatures, giving the people in these the means of opposing heavy internal taxes and oppressive measures in the proper stages. A great empire contains the amities and animosities of a world within itself.[70] We are not like the people of England, one people compactly settled on a small island, with a great city filled with frugal merchants, serving as a common centre of liberty and union: we are dispersed, and it is impracticable for any but the few to assemble in one place: the few must be watched, checked, and often resisted—tyranny has ever shewn a prediliction to be in close amity with them, or the one man. Drive it from kings and it flies to senators, to decemvirs, to dictators, to tribunes, to popular leaders, to military chiefs, &c.

2.8.109 De Lome well observes, that in societies, laws which were to be equal to all are soon warped to the private interests of the administrators, and made to defend the usurpations of a few.[71] The English, who had tasted the sweets of equal laws, were aware of this, and though they restored their king, they carefully delegated to parliament the advocates of freedom.

2.8.110 I have often lately heard it observed, that it will do very well for a people to make a constitution, and ordain, that at stated periods they will chuse, in a certain manner, a first magistrate, a given number of senators and representatives, and let them have all power to do as they please.[72] This doctrine, however it may do for a small republic, as Connecticut, for instance, where the people may chuse so many senators and representatives to assemble in the legislature, in an eminent degree, the interests, the views, feelings, and genuine sentiments of the people themselves, can never be admitted in an extensive country; and when this power is lodged in the hands of a few, not to limit the few, is but one step short of giving absolute power to one man—in a numerous representation the abuse of power is a common injury, and has no temptation—among the few, the abuse of power may often operate to the private emolument of those who abuse it.

The Federal Farmer.

IX

January 4, 1788.

Dear Sir,

The advocates of the constitution say we must trust to the administration, and elect good men for representatives. I admit, that in forming the social compact, we can fix only general principles, and, of necessity, must trust something to the wisdom and integrity of the administration. But the question is, do we not trust too much, and to men also placed in the vortex of temptation, to lay hold of proffered advantages for themselves and their connections, and to oppress the body of the people. 2.8.111

It is one thing to authorise a well organized legislature to make laws, under the restraints of a well guarded constitution, and another to assemble a few men, and to tell them to do what they please. I am not the more shaken in my principles, or disposed to despair of the cause of liberty, because some of our able men have adopted the yielding language of non-resistance, and writers dare insult the people with the signatures of Caesar, Mark Antony, and of other tyrants; because I see even moderate and amiable men, forced to let go of monarchy in 1775, still in love with it, to use the simile of our countrymen, when the political pot boils, the skum will often get uppermost and make its appearance. I believe the people of America, when they shall fully understand any political subject brought before them, will talk in a very different stile, and use the manly language of freedom. 2.8.112

But "the people must elect good men:"—Examine the system. Is it practicable for them to elect fit and proper representatives where the number is so small? "But the people may chuse whom they please."[73] This is an observation, I believe, made without due attention to facts and the state of the community. To explain my meaning, I will consider the descriptions of men commonly presented to the people as candidates for the offices of representatives—we may rank them in three classes: 1. The men who form the natural aristocracy, as before defined. 2. Popular demagogues: these men also are often politically elevated, so as to be seen by the people through the extent of large districts; they often have some abilities, without principle, and rise into notice by their noise and arts. 3. The substantial and respectable part of the democracy: they are a numerous and valuable set of men, who discern and judge well, but from being generally silent in public assemblies are often overlooked: they are the most substantial and best informed men in the several towns, who occasionally fill the middle grades of offices, &c. who hold not a splendid, but a respectable rank in private concerns: these men are extensively diffused through all the counties, towns, and small districts in the union; even they, and their immediate connections, are raised above the majority of the people, and as representatives are only brought to a level with a more numerous part of the commu- 2.8.113

nity, the middle orders, and a degree nearer the mass of the people. Hence it is that the best practical representation, even in a small state, must be several degrees more aristocratical than the body of the people. A representation so formed as to admit but few or none of the third class, is, in my opinion, not deserving of the name—even in armies, courts-martial are so formed as to admit subaltern officers into them. The true idea is, so to open and enlarge the representation as to let in a due proportion of the third class with those of the first. Now, my opinion is, that the representation proposed is so small as that ordinarily very few or none of them can be elected; and, therefore, after all the parade of words and forms the government must possess the soul of aristocracy, or something worse, the spirit of popular leaders.

2.8.114 I observed in a former letter, that the state of Delaware[,] of Rhode-Island[,] the Province of Main, and each of the great counties in Massachusetts &c. would have one member, and rather more than one when the representatives shall be increased to one for each 30,000 inhabitants.[74] In some districts the people are more dispersed and unequal than in others: In Delaware they are compact, in the Province of Main dispersed; how can the elections in either of those districts be regulated so as that a man of the third class can be elected?—Exactly the same principles and motives, the same uncontroulable circumstances, must govern the elections as in the choice of the governors. Call upon the people of either of those districts to chuse a governor, and it will, probably, never happen that they will not bestow a major part, or the greatest number, of their votes on some very conspicuous or very popular character. A man that is known among a few thousands of people, may be quite unknown among thirty or forty thousand. On the whole, it appears to me to be almost a self-evident position, that when we call on thirty or forty thousand inhabitants to unite in giving their votes for one man, it will be uniformly impracticable for them to unite in any men, except those few who have became eminent for their civil or military rank, or their popular legal abilities: it will be found totally impracticable for men in the private walks of life, except in the profession of the law, to become conspicuous enough to attract the notice of so many electors and have their suffrages.[75]

2.8.115 But if I am right, it is asked why so many respectable men advocate the adoption of the proposed system. Several reasons may be given—many of our gentlemen are attached to the principles of monarchy and aristocracy; they have an aversion to democratic republics. The body of the people have acquired large powers and substantial influence by the revolution. In the unsettled state of things, their numerous representatives, in some instances, misused their powers and have induced many good men suddenly to adopt ideas unfavourable to such republics, and which ideas they will discard on reflection. Without scrutinizing into the particulars of the proposed system, we immediately perceive that its general tendency is to collect the powers of government, now in the body of the people in reality, and to place them in

the higher orders and fewer hands; no wonder then that all those of and about these orders are attached to it; they feel there is something in this system advantageous to them. On the other hand, the body of the people evidently feel there is something wrong and disadvantageous to them; both descriptions perceive there is something tending to bestow on the former the height of power and happiness, and to reduce the latter to weakness, insignificance, and misery. The people evidently feel all this though they want expressions to convey their ideas. Further, even the respectable part of the democracy, have never yet been able to distinguish clearly where the fallacy lies; they find there are defects in the confederation; they see a system presented, they think something must be done; and, while their minds are in suspence, the zealous advocates force a reluctant consent. Nothing can be a stronger evidence of the nature of this system, than the general sense of the several orders in the community respecting its tendency: the parts taken generally by them proves my position, that notwithstanding the parade of words and forms, the government must possess the soul of aristocracy.

Congress, heretofore, have asked for moderate additional powers, the cry 2.8.116
was give them—be federal: but the proper distinction between the cases that produce this disposition, and the system proposed, has not been fairly made and seen in all its consequences. We have seen some of our state representations too numerous and without examining a medium we run into the opposite extreme. It is true, the proper number of federal representatives, is matter of opinion in some degree: but there are extremes which we immediately perceive, and others, which we clearly discover on examination. We should readily pronounce a representative branch of 15 members small in a federal government, having complete powers as to taxes, military matters, commerce, the coin, &c &c. On the other hand, we should readily pronounce a federal representation as numerous as those of the several states, consisting of about 1500 representatives, unwieldly and totally improper. It is asked, has not the wisdom of the convention found the medium? perhaps not: The convention was divided on this point of numbers: at least some of its ablest members urged, that instead of 65 representatives there ought to be 130 in the first instance: They fixed one representative for each 40,000 inhabitants, and at the close of the work, the president suggested, that the representation appeared to be too small and without debate, it was put at, not exceeding one for each 30,000. I mention these facts to shew, that the convention went on no fixed data. In this extensive country it is difficult to get a representation sufficiently numerous: Necessity, I believe, will oblige us to sacrifice in some degree the true genuine principles of representation. But this sacrifice ought to be as little as possible: How far we ought to increase the representation I will not pretend to say; but that we ought to increase it very considerably, is clear—to double it at least, making full allowances for the state representations: and this we may evidently do, and approach accordingly towards safety and perfection, without encountering any inconveniences. It is with great difficulty the

people can unite these different interests and views even tolerably, in the state senators, who are more than twice as numerous as the federal representatives, as proposed by the convention: even these senators are considered as so far removed from the people, that they are not allowed immediately to hold their purse strings.

2.8.117 The principle objections made to the increase of the representation are, the expence and difficulty in getting the members to attend.[76] The first cannot be important; the last, if founded, is against any federal government. As to the expence, I presume, the house of representatives will not be in sessions more than four months in the year. We find by experience, that about two-thirds of the members of representative assemblies usually attend; therefore, of the representation proposed by the convention, about forty five members probably will attend, doubling their number, about 90 will probably attend: their pay, in one case, at four dollars a day each (which is putting it high enough) will amount to, yearly, 21,600 dollars; in the other case, 43,200 dollars: difference 21,600 dollars;—reduce the state representatives from 1500 down to 1000, and thereby save the attendance of two-thirds of the 500, say three months in a year at one dollar and a quarter a day each: 37,125 dollars. Thus we may leave the state representations sufficient large, and yet save enough by the reduction nearly to support exceeding well the whole federal representation I propose. Surely we never can be so unwise as to sacrifice, essentially, the all-important principles of representation for so small a sum as 21,600 dollars a year for the United States; a single company of soldiers would cost this sum. It is a fact that can easily be shewn, that we expend three times this sum every year upon useless inferior offices and very triffling concerns. It is also a fact which can be shewn, that the United States in the late war suffered more by a faction in the federal government, than the pay of the federal representation will amount to for twenty years.

2.8.118 As to the attendance—Can we be so unwise as to establish an unsafe and inadequate representative branch, and give it as a reason, that we believe only a few members will be induced to attend; we ought certainly to establish an adequate representative branch, and adopt measures to induce an attendance; I believe that a due proportion of 130 or 140 members may be induced to attend: there are various reasons for the non-attendance of the members of the present congress; it is to be presumed that these will not exist under the new system.

To compensate for the want of a genuine representation in a government, where the purse and sword, and all important powers, are proposed to be lodged, a variety of unimportant things are enumerated by the advocates of it.

2.8.119 In the second place, it is said the members of congress must return home, and share in the burdens they may impose; and, therefore, private motives will induce them to make mild laws, to support liberty, and ease the burdens of the people:[77] this brings us to a mere question of interest under this head.

I think these observations will appear, on examination, altogether fallacious: because this individual interest, which may coincide with the rights and interests of the people, will be far more than balanced by opposite motives and opposite interests. If, on a fair calculation, a man will gain more by measures oppressive to others than he will lose by them, he is interested in their adoption. It is true, that those who govern, generally, by increasing the public burdens increase their own share of them; but by this increase they may, and often do, increase their salaries, fees, and emoluments, in a ten-fold proportion, by increasing salaries, forming armies and navies, and by making offices—If it shall appear the members of congress will have these temptations before them, the argument is on my side—they will view the account, and be induced continually to make efforts advantageous to themselves and connections, and oppressive to others.

We must examine facts—Congress, in its present form, have but few 2.8.120
offices to dispose of worth the attention of the members, or of men of the aristocracy; yet, from 1774 to this time, we find a large proportion of those offices assigned to those who were or had been members of congress, and though the states chuse annually sixty or seventy members, many of them have been provided for: but few men are known to congress in this extensive country, and, probably, but few will be to the president and senate, except those who have or shall appear as members of congress, or those whom the members may bring forward. The states may now chuse yearly ninety-one members of congress; under the new constitution they will have it in their power to chuse exactly the same number, perhaps afterwards, one hundred and fifteen, but these must be chosen once in two and six years; so that, in the course of ten years together, not more than two-thirds so many members of congress will be elected and brought into view, as there now are under the confederation in the same term of time: but at least there will be five, if not ten times, as many offices and places worthy the attention of the members, under the new constitution, as there are under the confederation: therefore, we may fairly presume, that a very great proportion of the members of congress, especially the influential ones, instead of returning to private life, will be provided for with lucrative offices, in the civil or military department, and not only the members, but many of their sons, friends, and connection. These offices will be in the constitutional disposition of the president and senate, and, corruption out of the question, what kind of security can we expect in a representation, so many of the members of which may rationally feel themselves candidates for these offices?—let common sense decide. It is true, that members chosen to offices must leave their seats in congress, and to some few offices they cannot be elected till the time shall be expired for which they were elected members; but this scarcely will effect the biass arising from the hopes and expectations of office.

It is not only in this point of view, the members of congress, by their 2.8.121
efforts, may make themselves and friends powerful and happy, while the

people may be oppressed: but there is another way in which they may soon warp laws, which ought to be equal, to their own advantages, by those imperceptible means, and on those doubtful principles which may not alarm. No society can do without taxes; they are the efficient means of safety and defence, and they too have often been the weapons by which the blessings of society have been destroyed. Congress will have power to lay taxes at pleasure for the general welfare; and if they mis-judge of the general welfare, and lay unnecessary oppressive taxes, the constitution will provide, as I shall hereafter shew, no remedy for the people or states—the people must bear them, or have recourse, not to any constitutional checks or remedies, but to that resistence which is the last resort, and founded in self-defence.[78]

2.8.122 It is well stipulated, that all duties, imposts, and excises shall be equal; and that direct taxes shall be apportioned on the several states by a fixed rule, but nothing further. Here commences a dangerous power in matters of taxation, lodged without any regard to the balance of interests of the different orders of men, and without any regard to the internal policy of the states. Congress having assigned to any state its quota, say to New-Jersey, 80,000 dollars in a given tax, congress will be entirely at liberty to apportion that sum on the counties and towns, polls, lands, houses, labour, &c. and appoint the assessors and collectors in that state in what manner they please; there will be nothing to prevent a system of tax laws being made, unduly to ease some descriptions of men and burden others: though such a system may be unjust and injudicious, though we may complain, the answer will be, congress have the power delegated by the people, and, probably, congress has done what it thought best.

2.8.123 By the confederation taxes must be quotaed on the several states by fixed rules, as before mentioned: but then each state's quota is apportioned on the several numbers and classes of citizens in the state, by the state legislature, assessed and collected by state laws. Great pains have been taken to counfound the two cases, which are as distinct as light and darkness; this I shall endeavour to illustrate, when I come to the amendment respecting internal taxes. I shall only observe, at present, that in the state legislatures the body of the people will be genuinely represented, and in congress not; that the right of resisting oppressive measures is inherent in the people, and that a constitutional barrier should be so formed, that their genuine representatives may stop an oppressive ruinous measure in its early progress, before it shall come to maturity, and the evils of it become in a degree fixed.

2.8.124 It has lately been often observed, that the power or body of men intrusted with the national defence and tranquility, must necessarily possess the purse unlimitedly, that the purse and sword must go together[79]—this is new doctrine in a free country, and by no means tenable. In the British government the king is particularly intrusted with the national honor and defence, but the commons solely hold the purse. I think I have amply shewn that the representation in congress will be totally inadequate in matters of taxation,

&c. and, therefore, that the ultimate controul over the purse must be lodged elsewhere.

We are not to expect even honest men rigidly to adhere to the line of strict impartiality, where the interest of themselves or friends is particularly concerned; if we do expect it, we shall deceive ourselves, and make a wrong estimate of human nature. 2.8.125

But it is asked how shall we remedy the evil, so as to complete and perpetuate the temple of equal laws and equal liberty? Perhaps we never can do it. Possibly we never may be able to do it in this immense country, under any one system of laws however modified; nevertheless, at present, I think the experiment worth a making. I feel an aversion to the disunion of the states, and to separate confederacies; the states have fought and bled in a common cause, and great dangers too may attend these confederacies. I think the system proposed capable of very considerable degrees of perfection, if we pursue first principles. I do not think that De Lome, or any writer I have seen, has sufficiently pursued the proper inquiries and efficient means for making representation and balances in government more perfect; it is our task to do this in America. Our object is equal liberty, and equal laws diffusing their influence among all orders of men; to obtain this we must guard against the biass of interest and passions, against interested combinations, secret or open; we must aim at a balance of efforts and strength.

Clear it is, by increasing the representation we lessen the prospects of each member of congress being provided for in public offices; we proportionably lessen official influence and strengthen his prospects of becoming a private citizen, subject to the common burdens, without the compensation of the emoluments of office. By increasing the representation we make it more difficult to corrupt and influence the members; we diffuse them more extensively among the body of the people, perfect the balance, multiply information, strengthen the confidence of the people, and consequently support the laws on equal and free principles. There are two other ways, I think, of obtaining in some degree the security we want; the one is, by excluding more extensively the members from being appointed to offices; the other is, by limiting some of their powers; but these two I shall examine hereafter. 2.8.126

The Federal Farmer.

X

January 7, 1788.

Dear Sir,

It is said that our people have a high sense of freedom, possess power, property, and the strong arm; meaning, I presume, that the body of the 2.8.127

people can take care of themselves, and awe their rulers; and, therefore, particular provision in the constitution for their security may not be essential.[80] When I come to examine these observations, they appear to me too trifling and loose to deserve a serious answer.

2.8.128 To palliate for the smallness of the representation, it is observed, that the state governments in which the people are fully represented, necessarily form a part of the system.[81] This idea ought to be fully examined. We ought to enquire if the convention have made the proper use of these essential parts; the state governments then we are told will stand between the arbitrary exercise of power and the people: true they may, but armless and helpless, perhaps, with the privilege of making a noise when hurt—this is no more than individuals may do. Does the constitution provide a single check for a single measure, by which the state governments can constitutionally and regularly check the arbitrary measures of congress?[82] Congress may raise immediately fifty thousand men, and twenty millions of dollars in taxes, build a navy, model the militia, &c. and all this constitutionally. Congress may arm on every point, and the state governments can do no more than an individual, by petition to congress, suggest their measures are alarming and not right.

2.8.129 I conceive the position to be undeniable, that the federal government will be principally in the hands of the natural aristocracy, and the state governments principally in the hands of the democracy, the representatives of the body of the people. These representatives in Great-Britain hold the purse, and have a negative upon all laws. We must yield to circumstances, and depart something from this plan, and strike out a new medium, so as to give efficacy to the whole system, supply the wants of the union, and leave the several states, or the people assembled in the state legislatures, the means of defence.

2.8.130 It has been often mentioned, that the objects of congress will be few and national, and require a small representation: that the objects of each state will be many and local, and require a numerous representation.[83] This circumstance has not the weight of a feather in my mind. It is certainly unadvisable to lodge in 65 representatives, and 26 senators, unlimited power to establish systems of taxation, armies, navies, model the militia, and to do every thing that may essentially tend soon to change, totally, the affairs of the community; and to assemble 1500 state representatives, and 160 senators, to make fence laws, and laws to regulate the descent and conveyance of property, the administration of justice between man and man, to appoint militia officers, &c.

2.8.131 It is not merely the quantity of information I contend for. Two taxing powers may be inconvenient; but the point is, congress, like the senate of Rome, will have taxing powers, and the people no check—when the power is abused, the people may complain and grow angry, so may the state governments; they may remonstrate and counteract, by passing laws to

prohibit the collection of the congressional taxes; but these will be acts of the people, acts of sovereign power, the denier resort unknown to the constitution; acts operating in terrorum, acts of resistence, and not the exercise of any constitutional power to stop or check a measure before matured: a check properly is the stopping, by one branch in the same legislature, a measure proposed by the other in it. In fact the constitution provides for the states no check, properly speaking, upon the measures of congress—Congress can immediately enlist soldiers, and apply to the pockets of the people.

These few considerations bring us to the very strong distinction between 2.8.132
the plan that operates on federal principles, and the plan that operates on consolidated principles. A plan may be federal or not as to its organization; each state may retain its vote or not; the sovereignty of the state may be represented, or the people of it. A plan may be federal or not as to its operations—federal when it requires men and monies of the states, and the states as such make the laws for raising the men and monies—Not federal, when it leaves the states governments out of the question, and operates immediately upon the persons and property of the citizens. The first is the case with the confederation, the second with the new plan: in the first the state governments may be check, in the last none at all. This distinction I shall pursue further hereafter, under the head before mentioned, of amendments as to internal taxes.[84] And here I shall pursue a species of checks which writers have not often noticed.

To excuse the smallness of the representation, it is said the new congress 2.8.133
will be more numerous than the old one.[85] This is not true; and for the facts I refer you to my letter of the 4th instant, to the plan and confederation; besides there is no kind of similitude between the two plans. The confederation is a mere league of the states, and congress is formed with the particular checks, and possess the united powers, enumerated in my letter of the 25th ult. The new plan is totally a different thing: a national government to many purposes administered, by men chosen for two, four, and six years, not recallable, and among whom there will be no rotation; operating immediately in all money and military matters, &c. on the persons and property of the citizens—I think, therefore, that no part of the confederation ought to be adduced for supporting or injuring the new constitution. It is also said that the constitution gives no more power to congress than the confederation, respecting money and military matters; that congress, under the confederation, may require men and monies to any amount, and the states are bound to comply. This is generally true; but, I think, I shall in a subsequent letter satisfactorily prove, that the states have well founded checks for securing their liberties.[86]

I admit the force of the observation, that all the federal powers, by the 2.8.134
confederation, are lodged in a single assembly; however, I think much more may be said in defence of the leading principles of the confederation. I do

not object to the qualifications of the electors of representatives, and I fully agree that the people ought to elect one branch.

2.8.135 Further, it may be observed, that the present congress is principally an executive body, which ought not to be numerous; that the house of representatives will be a mere legislative branch, and being the democratic one, ought to be numerous. It is one of the greatest advantages of a government of different branches, that each branch may be conveniently made conformable to the nature of the business assigned it, and all be made conformable to the condition of the several orders of the people. After all the possible checks and limitations we can devise, the powers of the union must be very extensive; the sovereignty of the nation cannot produce the object in view, the defence and tranquility of the whole, without such powers, executive and judicial. I dislike the present congress a single, assembly, because it is impossible to fit it to receive those powers: the executive and judicial powers, in the nature of things, ought to be lodged in a few hands, the legislature in many hands; therefore, want of safety, and unavoidable hasty measures, out of the question, they never can all be lodged in one assembly properly—it, in its very formation, must imply a contradiction.

2.8.136 In objection to increasing the representation, it has also been observed, that it is difficult to assemble a hundred men or more without making them tumultuous and a mere mob;[87] reason and experience do not support this observation. The most respectable assemblies we have any knowledge of and the wisest, have been those, each of which consisted of several hundred members; as the senate of Rome, of Carthage, of Venice, the British Parliament, &c. &c. I think I may without hazarding much, affirm, that our more numerous state assemblies and conventions have universally discovered more wisdom, and as much order, as the less numerous ones: There must be also a very great difference between the characters of two or three hundred men assembled from a single state, and the characters of the number or half the number assembled from all the united states.

2.8.137 It is added, that on the proposed plan the house of representatives in fifty or a hundred years, will consist of several hundred members:[88] The plan will begin with sixty-five, and we have no certainty that the number ever will be encreased, for this plain reason—that all that combination of interests and influence which has produced this plan, and supported so far, will constantly oppose the increase of the representation, knowing that thereby the government will become more free and democratic: But admitting, after a few years, there will be a member for each 30,000 inhabitants, the observation is trifling, the government is in a considerable measure to take its tone from its early movements, and by means of a small representation it may in half of 50 or 100 years, get moved from its basis, or at least so far as to be incapable of ever being recovered. We ought, therefore, on every principle now to fix the government on proper principles, and fit to our present condition—when the representation shall become too numerous, alter it; or

we may now make provision, that when the representation shall be increased to a given number, that then there shall be one for each given number of inhabitants, &c.

Another observation is, that congress will have no temptations to do wrong[89]—the men that make it must be very uninformed, or suppose they are talking to children. In the first place, the members will be governed by all those motives which govern the conduct of men, and have before them all the allurements of offices and temptations, to establish unequal burdens, before described. In the second place, they and their friends, probably, will find it for their interests to keep up large armies, navies, salaries, &c. and in laying adequate taxes. In the third place, we have no good grounds to presume, from reason or experience, that it will be agreeable to their characters or views, that the body of the people should continue to have power effectually to interfere in the affairs of government. But it is confidently added, that congress will not have it in their power to oppress or enslave the people, that the people will not bear it.[90] It is not supposed that congress will act the tyrant immediately, and in the face of day light. It is not supposed congress will adopt important measures, without plausible pretences, especially those which may tend to alarm or produce opposition. We are to consider the natural progress of things: that men unfriendly to republican equality will go systematically to work, gradually to exclude the body of the people from any share in the government, first of the substance, and then of the forms. The men who will have these views will not be without their agents and supporters. When we reflect, that a few years ago we established democratic republics, and fixed the state governments as the barriers between congress and the pockets of the people; what great progress has been made in less than seven years to break down those barriers, and essentially to change the principles of our governments, even by the armless few: is it chimerical to suppose that in fifteen or twenty years to come, that much more can be performed, especially after the adoption of the constitution, when the few will be so much better armed with power and influence, to continue the struggle? probably, they will be wise enough never to alarm, but gradually prepare the minds of the people for one specious change after another, till the final object shall be obtained. Say the advocates, these are only possibilities—they are probabilities, a wise people ought to guard against; and the address made use of to keep the evils out of sight, and the means to prevent them, confirm my opinion. 2.8.138

But to obviate all objections to the proposed plan in the last resort: it is said our people will be free, so long as they possess the habits of freemen, and when they lose them, they must receive some other forms of government.[91] To this I shall only observe, that this is very humiliating language, and can, I trust, never suit a manly people, who have contended nobly for liberty, and declared to the world they will be free. 2.8.139

I have dwelt much longer than I expected upon the increasing the repre- 2.8.140

sentation, the democratic interest in the federal system; but I hope the importance of the subject will justify my dwelling upon it. I have pursued it in a manner new, and I have found it necessary to be somewhat prolix, to illustrate the point I had in view. My idea has ever been, when the democratic branch is weak and small, the body of the people have no defence, and every thing to fear: if they expect to find genuine political friends in kings and nobles, in great and powerful men, they deceive themselves. On the other hand, fix a genuine democratic branch in the government, solely to hold the purse, and with the power of impeachment, and to propose and negative laws, cautiously limit the king and nobles, or the executive and the senate, as the case may be, and the people, I conceive, have but little to fear, and their liberties will be always secure.

2.8.141 I think we are now arrived to a new æra in the affairs of men, when the true principles of government will be more fully unfolded than heretofore, and a new world, as it were, grow up in America. In contemplating representation, the next thing is the security of elections. Before I proceed to this, I beg leave to observe, that the pay of the representatives of the people is essentially connected with their interests.

2.8.142 Congress may put the pay of the members unreasonably high, or so low as that none but the rich and opulent can attend; there are very strong reasons for supposing the latter, probably, will be the case, and a part of the same policy, which uniformly and constantly exerts itself to transfer power from the many to the few. Should the pay be well fixed, and made alterable by congress, with the consent of a majority of the state legislatures, perhaps, all the evils to be feared on this head might, in the best practicable manner, be guarded against, and proper security introduced. It is said the state legislatures fix their own pay—the answer is, that congress is not, nor can it ever be well formed on those equal principles the state legislatures are. I shall not dwell on this point, but conclude this letter with one general observation, that the check[s] I contend for in the system proposed, do not, in the least, any of them tend to lessen the energy of it; but giving grounds for the confidence of the people, greatly to increase its real energy, by insuring their constant and hearty support.

The Federal Farmer.

XI

January 10, 1788.

Dear Sir,

2.8.143 I shall now add a few observations respecting the organization of the senate, the manner of appointing it, and its powers.

The senate is an assembly of 26 members, two from each state, though the senators are apportioned on the federal plan, they will vote individually; they represent the states, as bodies politic, sovereign to certain purposes; the states being sovereign and independent, are all considered equal, each with the other in the senate. In this we are governed solely by the ideal equalities of sovereignties; the federal and state governments forming one whole, and the state governments an essential part, which ought always to be kept distinctly in view, and preserved: I feel more disposed, on reflection, to acquiesce in making them the basis of the senate, and thereby to make it the interest and duty of the senators to preserve distinct, and to perpetuate the respective sovereignties they shall represent.[92]

As to the appointments of senators, I have already observed, that they must be appointed by the legislatures, by concurrent acts, and each branch have an equal share of power, as I do not see any probability of amendments, if advisable, in these points, I shall not dwell upon them. 2.8.144

The senate, as a legislative branch, is not large, but as an executive branch quite too numerous. It is not to be presumed that we can form a genuine senatorial branch in the United States, a real representation of the aristocracy and balance in the legislature, any more than we can form a genuine representation of the people. Could we separate the aristocratical and democratical interests; compose the senate of the former, and the house of assembly of the latter, they are too unequal in the United States to produce a balance. Form them on pure principles, and leave each to be supported by its real weight and connections, the senate would be feeble, and the house powerful:—I say, on pure principles; because I make a distinction between a senate that derives its weight and influence from a pure source, its numbers and wisdom, its extensive property, its extensive and permanent connections; and a senate composed of a few men, possessing small property, small and unstable connections, that derives its weight and influence from a corrupt or pernicious source; that is, merely from the power given it by the constitution and laws, to dispose of the public offices, and the annexed emoluments, and by those means to interest officers, and the hungry expectants of offices, in support of its measures. I wish the proposed senate may not partake too much of the latter description.[93] 2.8.145

To produce a balance and checks, the constitution proposes two branches in the legislature; but they are so formed, that the members of both must generally be the same kind of men—men having similar interests and views, feelings and connections—men of the same grade in society, and who associate on all occasions (probably, if there be any difference, the senators will be the most democratic.) Senators and representatives thus circumstanced, as men, though convened in two rooms, to make laws, must be governed generally by the same motives and views, and therefore pursue the same system of politics; the partitions between the two branches will be merely those of the building in which they sit: there will not be found in them 2.8.146

any of those genuine balances and checks, among the real different interests, and efforts of the several classes of men in the community we aim at; nor can any such balances and checks be formed in the present condition of the United States in any considerable degree of perfection: but to give them the greatest degree of perfection practicable, we ought to make the senate respectable as to numbers, the qualifications of the electors and of the elected; to increase the numbers of the representatives, and so to model the elections of them, as always to draw a majority of them substantially from the body of the people. Though I conclude the senators and representatives will not form in the legislature those balances and checks which correspond with the actual state of the people; yet I approve of two branches, because we may notwithstanding derive several advantages from them. The senate, from the mode of its appointment, will probably be influenced to support the state governments, and, from its periods of service will produce stability in legislation, while frequent elections may take place in the other branch. There is generally a degree of competition between two assemblies even composed of the same kind of men; and by this, and by means of every law's passing a revision in the second branch, caution, coolness, and deliberation are produced in the business of making laws. By means of a democratic branch we may particularly secure personal liberty; and by means of a senatorial branch we may particularly protect property. By the division, the house becomes the proper body to impeach all officers for misconduct in office, and the senate the proper court to try them; and in a country where limited powers must be lodged in the first magistrate, the senate, perhaps, may be the most proper body to be found to have a negative upon him in making treaties, and in managing foreign affairs.

2.8.147 Though I agree the federal senate, in the form proposed, may be useful to many purposes, and that it is not very necessary to alter the organization, modes of appointment, and powers of it in several respects; yet, without alterations in others, I sincerely believe it will, in a very few years, become the source of the greatest evils. Some of these alterations, I conceive, to be absolutely necessary, and some of them at least advisable.

1. By the confederation the members of congress are chosen annually. By art 1. sect. 2. of the constitution, the senators shall be chosen for six years. As the period of service must be, in a considerable degree, matter of opinion on this head, I shall only make a few observations, to explain why I think it more advisable to limit it to three or four years.

The people of this country have not been accustomed to so long appointments in their state governments, they have generally adopted annual elections. The members of the present congress are chosen yearly, who, from the nature and multiplicity of their business, ought to be chosen for longer periods than the federal senators—Men six years in office absolutely contract callous habits, and cease, in too great a degree, to feel their dependance, and for the condition of their constitutents. Senators continued in

offices three or four years, will be in them longer than any popular erroneous opinions will probably continue to actuate their electors—men appointed for three or four years, will generally be long enough in office to give stability, and amply to acquire political information. By a change of legislators, as often as circumstances will permit, political knowledge is diffused more extensively among the people, and the attention of the electors and elected more constantly kept alive; circumstances of infinite importance in a free country. Other reasons might be added, but my subject is too extensive to admit of my dwelling upon less material points.

2. When the confederation was formed, it was considered essentially necessary that the members of congress should at any time be recalled by their respective states, when the states should see fit, and others be sent in their room. I do not think it less necessary that this principle should be extended to the members of congress under the new constitution, and especially to the senators. I have had occasion several times to observe, that let us form a federal constitution as extensively, and on the best principles in our power, we must, after all, trust a vast deal to a few men, who, far removed from their constituents, will administer the federal government; there is but little danger these men will feel too great a degree of dependance: the necessary and important object to be attended to, is to make them feel dependant enough. Men elected for several years, several hundred miles distant from their states, possessed of very extensive powers, and the means of paying themselves, will not, probably, be oppressed with a sense of dependance and responsibility.

The senators will represent sovereignties, which generally have, and always ought to retain, the power of recalling their agents; the principle of responsibility is strongly felt in men who are liable to be recalled and censured for their misconduct; and, if we may judge from experience, the latter will not abuse the power of recalling their members; to possess it, will, at least be a valuable check. It is in the nature of all delegated power, that the constituents should retain the right to judge concerning the conduct of their representatives; they must exercise the power, and their decision itself, their approving or disapproving that conduct implies a right, a power to continue in office, or to remove from it. But whenever the substitute acts under a constitution, then it becomes necessary that the power of recalling him be expressed. The reasons for lodging a power to recall are stronger, as they respect the senate, than as they respect the representatives; the latter will be more frequently elected, and changed of course, and being chosen by the people at large, it would be more difficult for the people than for the legislatures to take the necessary measures for recalling: but even the people, if the powers will be more beneficial to them than injurious, ought to possess it. The people are not apt to wrong a man who is steady and true to their interests; they may for a while be misled by party representations, and leave a good man out of office unheard; but every recall supposes a de-

liberate decision, and a fair hearing; and no man who believes his conduct proper, and the result of honest views, will be the less useful in his public character, on account of the examination his actions may be liable to; and a man conscious of the contrary conduct, ought clearly to be restrained by the apprehensions of a trial. I repeat it, it is interested combinations and factions we are particularly to guard against in the federal government, and all the rational means that can be put into the hands of the people to prevent them, ought to be provided and furnished for them. Where there is a power to recall, trusty centinels among the people, or in the state legislatures, will have a fair opportunity to become useful. If the members in congress from the states join in such combinations, or favour them, or pursue a pernicious line of conduct, the most attentive among the people, or in the state legislatures, may formally charge them before their constituents: the very apprehensions of such constitutional charges may prevent many of the evils mentioned, and the recalling the members of a single state, a single senator, or representative, may often prevent many more; nor do I, at present, discover any danger in such proceedings, as every man who shall move for a recall will put his reputation at stake, to shew he has reasonable grounds for his motion; and it is not probable such motions will be made unless there be good apparent grounds for succeeding; nor can the charge or motion be any thing more than the attack of an individual or individuals, unless a majority of the constituents shall see cause to go into the enquiry. Further, the circumstance of such a power being lodged in the constituents, will tend continually to keep up their watchfulness, as well as the attention and dependance of the federal senators and representatives.

3. By the confederation it is provided, that no delegate shall serve more than three years in any term of six years, and thus, by the forms of the government, a rotation of members is produced: a like principle has been adopted in some of the state governments, and also in some antient and modern republics. Whether this exclusion of a man for a given period, after he shall have served a given time, ought to be ingra[f]ted into a constitution or not, is a question, the proper decision materially depends upon the leading features of the government: some governments are so formed as to produce a sufficient fluctuation and change of members of course, in the ordinary course of elections, proper numbers of new members are, from time to time, brought into the legislature, and a proportionate number of old ones go out, mix, and become diffused among the people. This is the case with all numerous representative legislatures, the members of which are frequently elected, and constantly within the view of their constituents. This is the case with our state governments, and in them a constitutional rotation is unimportant. But in a government consisting of but a few members, elected for long periods, and far removed from the observation of the people, but few changes in the ordinary course of elections take place among the members; they become in some measure a fixed body, and often inattentive to the

public good, callous, selfish, and the fountain of corruption. To prevent these evils, and to force a principle of pure animation into the federal government, which will be formed much in this last manner mentioned, and to produce attention, activity, and a diffusion of knowledge in the community, we ought to establish among others the principle of rotation. Even good men in office, in time, imperceptibly lose sight of the people, and gradually fall into measures prejudicial to them. It is only a rotation among the members of the federal legislature I shall contend for: judges and officers at the heads of the judicial and executive departments, are in a very different situation, their offices and duties require the information and studies of many years for performing them in a manner advantageous to the people. These judges and officers must apply their whole time to the detail business of their offices, and depend on them for their support: then they always act under masters or superiors, and may be removed from office for misconduct; they pursue a certain round of executive business: their offices must be in all societies confined to a few men, because but few can become qualified to fill them: and were they, by annual appointments, open to the people at large, they are offices of such a nature as to be of no service to them; they must leave these offices in the possession of the few individuals qualified to fill them, or have them badly filled. In the judicial and executive departments also, the body of the people possess a large share of power and influence, as jurors and subordinate officers, among whom there are many and frequent rotations. But in every free country the legislatures are all on a level, and legislation becomes partial whenever, in practice, it rests for any considerable time in a few hands. It is the true republican principle to diffuse the power of making the laws among the people, and so to modify the forms of the government as to draw in turn the well informed of every class into the legislature.

To determine the propriety or impropriety of this rotation, we must take the inconveniencies as well as the advantages attending it into view: on the one hand, by this rotation, we may sometimes exclude good men from being elected. On the other hand, we guard against those pernicious connections, which usually grow up among men left to continue long periods in office, we increase the number of those who make the laws and return to their constituents; and thereby spread information, and preserve a spirit of activity and investigation among the people: hence a balance of interests and exertions are preserved, and the ruinous measures of factions rendered more impracticable. I would not urge the principle of rotation, if I believed the consequence would be an uninformed federal legislature; but I have no apprehension of this in this enlightened country. The members of congress, at any one time, must be but very few, compared with the respectable well informed men in the United States; and I have no idea there will be any want of such men for members of congress, though by a principle of rotation the constitution should exclude from being elected for two years those federal legislators, who may have served the four years immediately preceding, or

any four years in the six preceding years. If we may judge from experience and fair calculations, this principle will never operate to exclude at any one period a fifteenth part, even of those men who have been members of congress. Though no man can sit in congress, by the confederation, more than three years in any term of six years, yet not more than three, four, or five men in any one state, have been made ineligible at any one period: and if a good man happen to be excluded by this rotation, it is only for a short time. All things considered, the inconveniencies of the principle must be very inconsiderable compared with the many advantages of it. It will generally be expedient for a man who has served four years in congress to return home, mix with the people, and reside some time with them: this will tend to reinstate him in the interests, feelings, and views similar to theirs, and thereby confirm in him the essential qualifications of a legislator. Even in point of information, it may be observed, the useful information of legislators is not acquired merely in studies in offices, and in meeting to make laws from day to day; they must learn the actual situation of the people, by being among them, and when they have made laws, return home, and observe how they operate. Thus occasionally to be among the people, is not only necessary to prevent or banish the callous habits and self interested views of office in legislators, but to afford them necessary information, and to render them useful: another valuable end is answered by it, sympathy, and the means of communication between them and their constituents, is substantially promoted; so that on every principle legislators, at certain periods, ought to live among their constituents.

Some men of science are undoubtedly necessary in every legislature; but the knowledge, generally, necessary for men who make laws, is a knowledge of the common concerns, and particular circumstances of the people. In a republican government seats in the legislature are highly honorable; I believe but few do, and surely none ought to consider them as places of profit and permanent support. Were the people always properly attentive, they would, at proper periods, call their law makers home, by sending others in their room: but this is not often the case, and therefore, in making constitutions, when the people are attentive, they ought cautiously to provide for those benefits, those advantageous changes in the administration of their affairs, which they are often apt to be inattentive to in practice. On the whole, to guard against the evils, and to secure the advantages I have mentioned, with the greatest degree of certainty, we ought clearly, in my opinion, to increase the federal representation, to secure elections on proper principles, to establish a right to recall members, and a rotation among them.

4. By the art. 2. sect. 2. treaties must be made with the advice and consent of the senate, and two-thirds of those present must concur: also, with consent of the senate, almost all federal officers, civil and military, must be appointed. As to treaties I have my doubts; but as to the appoint-

ments of officers, I think we may clearly shew the senate to be a very improper body indeed to have any thing to do with them. I am not perfectly satisfied, that the senate, a branch of the legislature, and court for trying impeachments, ought to have a controuling power in making all treaties; yet, I confess, I do not discern how a restraint upon the president in this important business, can be better or more safely lodged: a power to make and conclude all treaties is too important to be vested in him alone, or in him and an executive council, only sufficiently numerous for other purpose, and the house of representatives is too numerous to be concerned in treaties of peace and of alliance. This power is now lodged in congress, to be exercised by the consent of nine states. The federal senate, like the delegations in the present congress, will represent the states, and the consent of two-thirds of that senate will bear some similitude to the consent of nine states. It is probable the United States will not make more than one treaty, on an average, in two or three years, and this power may always be exercised with great deliberation: perhaps the senate is sufficiently numerous to be trusted with this power, sufficiently small to proceed with secrecy, and sufficiently permanent to exercise this power with proper consistency and due deliberation. To lodge this power in a less respectable and less numerous body might not be safe; we must place great confidence in the hands that hold it, and we deceive ourselves if we give it under an idea, that we can impeach, to any valuable purpose, the man or men who may abuse it.

On a fair construction of the constitution, I think the legislature has a proper controul over the president and senate in settling commercial treaties. By art. 1. sect. 2. the legislature will have power to regulate commerce with foreign nations, &c. By art. 2. sect. 2. the president, with the advice and consent of two-thirds of the senate, may make treaties. These clauses must be considered together, and we ought never to make one part of the same instrument contradict another, if it can be avoided by any reasonable construction. By the first recited clause, the legislature has the power, that is, as I understand it, the sole power to regulate commerce with foreign nations, or to make all the rules and regulations respecting trade and commerce between our citizens and foreigners: by the second recited clause, the president and senate have power generally to make treaties.—There are several kinds of treaties—as treaties of commerce, of peace, of alliance, &c. I think the words to "make treaties," may be consistently construed, and yet so as it shall be left to the legislature to confirm commercial treaties; they are in their nature and operation very distinct from treaties of peace and of alliance; the latter generally require secrecy, it is but very seldom they interfere with the laws and internal police of the country; to make them is properly the exercise of executive powers, and the constitution authorises the president and senate to make treaties, and gives the legislature no power, directly or indirectly, respecting these treaties of peace and alliance. As to treaties of commerce, they do not generally re-

quire secrecy, they almost always involve in them legislative powers, interfere with the laws and internal police of the country, and operate immediately on persons and property, especially in the commercial towns: (they have in Great-Britain usually been confirmed by parliament;) they consist of rules and regulations respecting commerce: and to regulate commerce, or to make regulations respecting commerce, the federal legislature, by the constitution, has the power. I do not see that any commercial regulations can be made in treaties, that will not infringe upon this power in the legislature: therefore, I infer, that the true construction is, that the president and senate shall make treaties; but all commercial treaties shall be subject to be confirmed by the legislature. This construction will render the clauses consistent, and make the powers of the president and senate, respecting treaties, much less exceptionable.

The Federal Farmer.

XII

January 12, 1788.

Dear Sir,

2.8.148 On carefully examining the parts of the proposed system, respecting the elections of senators, and especially of the representatives, they appear to me to be both ambiguous and very defective. I shall endeavour to pursue a course of reasoning, which shall fairly lead to establishing the impartiality and security of elections, and then to point out an amendment in this respect.

It is well observed by Montesquieu, that in republican governments, the forms of elections are fundamental; and that it is an essential part of the social compact, to ascertain by whom, to whom, when, and in what manner suffrages are to be given.[94]

2.8.149 Wherever we find the regulation of elections have not been carefully fixed by the constitution, or the principles of them, we constantly see the legislatures new modifying its own form, and changing the spirit of the government to answer partial purposes.

By the proposed plan it is fixed, that the qualifications of the electors of the federal representatives shall be the same as those of the electors of state representatives; though these vary some in the several states the electors are fixed and designated.

2.8.150 The qualifications of the representatives are also fixed and designated, and no person under 25 years of age, not an inhabitant of the state, and not having been seven years a citizen of the United States, can be elected; the clear inference is, that all persons 25 years of age, and upwards, inhabitants

of the state, and having been, at any period or periods, seven years citizens of the United States, may be elected representatives. They have a right to be elected by the constitution, and the electors have a right to chuse them. This is fixing the federal representation, as to the elected, on a very broad basis: it can be no objection to the elected, that they are Christians, Pagans, Mahometans, or Jews; that they are of any colour, rich or poor, convict or not: Hence many men may be elected, who cannot be electors. Gentlemen who have commented so largely upon the wisdom of the constitution, for excluding from being elected young men under a certain age, would have done well to have recollected, that it positively makes pagans, convicts, &c. eligible. The people make the constitution; they exclude a few persons, by certain descriptions, from being elected, and all not thus excluded are clearly admitted. Now a man 25 years old, an inhabitant of the state, and having been a citizen of the states seven years, though afterwards convicted, may be elected, because not within any of the excluding clauses; the same of a beggar, an absentee, &c.

The right of the electors, and eligibility of the elected being fixed by the people, they cannot be narrowed by the state legislatures, or congress: it is established, that a man being (among other qualifications) an inhabitant of the state, shall be eligible. Now it would be narrowing the right of the people to confine them in their choice to a man, an inhabitant of a particular county or district in the state. Hence it follows, that neither the state legislatures or congress can establish district elections; that is, divide the state into districts, and confine the electors of each district to the choice of a man resident in it. If the electors could be thus limited in one respect, they might in another be confined to chuse a man of a particular religion, of certain property, &c. and thereby half of the persons made eligible by the constitution be excluded. All laws, therefore, for regulating elections must be made on the broad basis of the constitution. 2.8.151

Next, we may observe, that representatives are to be chosen by the people of the state. What is a choice by the people of the state? If each given district in it choose one, will that be a choice within the meaning of the constitution? Must the choice be by plurality of votes, or a majority? In connection with these questions, we must take the 4th sect. art. 1. where it is said the state legislatures shall prescribe the times, places, and manner of holding elections; but congress may make or alter such regulations. By this clause, I suppose, the electors of different towns and districts in the state may be assembled in different places, to give their votes; but when so assembled, by another clause they cannot, by congress or the state legislatures, be restrained from giving their votes for any man an inhabitant of the state, and qualified as to age, and having been a citizen the time required. But I see nothing in the constitution by which to decide, whether the choice shall be by a plurality or a majority of votes: this, in my mind, is by far the most important question in the business of elections. When we say a repre- 2.8.152

sentative shall be chosen by the people, it seems to imply that he shall be chosen by a majority of them; but states which use the same phraseology in this respect, practice both ways. I believe a majority of the states, chuse by pluralities, and, I think it probable, that the federal house of representatives will decide that a choice of its members by pluralities is constitutional. A man who has the most votes is chosen in Great-Britain. It is this, among other things, that gives every man fair play in the game of influence and corruption. I believe that not much stress was laid upon the objection that congress may assemble the electors at some out of the way place. However, the advocates seem to think they obtain a victory of no small glory and importance, when they can shew, with some degree of colour, that the evils is rather a possibility than a probability.

2.8.153 When I observed that the elections were not secured on proper principles,[95] I had an idea of far more probable and extensive evils, secret mischiefs, and not so glaring transgressions, the exclusions of proper district elections, and of the choice by a majority.

2.8.154 It is easy to perceive that there is an essential difference between elections by pluralities and by majorities, between choosing a man in a small or limited district, and choosing a number of men promiscuously by the people of a large state; and while we are almost secure of judicious unbiassed elections by majorities in such districts, we have no security against deceptions, influence and corruption in states or large districts in electing by pluralities. When a choice is made by a plurality of votes, it is often made by a very small part of the electors, who attend and give their votes, when by a majority, never by so few as one half of them. The partialities and improprieties attending the former mode may be illustrated by a case that lately happened in one of the middle states.—Several representatives were to be chosen by a large number of inhabitants compactly settled, among whom there were four or five thousand voters. Previous to the time of election a number of lists of candidates were published, to divide and distract the voters in general—about half a dozen men of some influence, who had a favourite list to carry, met several times, fixed their list, and agreed to hand it about among all who could probably be induced to adopt it, and to circulate the other lists among their opponents, to divide them. The poll was opened, and several hundred electors, suspecting nothing, attended and put in their votes; the list of the half dozen was carried, and men were found to be chosen, some of whom were very disagreeable to a large majority of the electors: though several hundred electors voted, men on that list were chosen who had only 45, 43, 44, &c. votes each; they had a plurality, that is, more than any other persons: the votes generally were scattered, and those who made even a feeble combination succeeded in placing highest upon the list several very unthought of and very unpopular men. This evil never could have happened in a town where all the voters meet in one place, and consider no man as elected unless he have a majority, or more than half of all

the votes; clear it is, that the men on whom thus but a small part of the votes are bestowed, cannot possess the confidence of the people, or have any considerable degree of influence over them.

2.8.155 But as partial, as liable to secret influence, and corruption as the choice by pluralities may be, I think, we cannot avoid it, without essentially increasing the federal representation, and adopting the principles of district elections. There is but one case in which the choice by the majority is practicable, and that is, where districts are formed of such moderate extent that the electors in each can conveniently meet in one place, and at one time, and proceed to the choice of a representative; when, if no man have a majority, or more than half of all the votes the first time, the voters may examine the characters of those brought forward, accommodate, and proceed to repeat their votes till some one shall have that majority. This, I believe, cannot be a case under the constitution proposed in its present form. To explain my ideas, take Massachusetts, for instance, she is entitled to eight representatives, she has 370,000 inhabitants, about 46,000 to one representative; if the elections be so held that the electors throughout the state meet in their several towns or places, and each elector puts in his vote for eight representatives, the votes of the electors will ninety-nine times in a hundred, be so scattered that on collecting the votes from the several towns or places, no men will be found, each of whom have a majority of the votes, and therefore the election will not be made. On the other hand, there may be such a combination of votes, that in thus attempting to chuse eight representatives, the electors may chuse even fifteen. Suppose 10,000 voters to attend and give their votes, each voter will give eight votes, one for each of eight representatives; in the whole 80,000 votes will be given—eight men, each having 5001 votes, in the whole 40,008 will have each a majority, and be chosen—39,092 votes will be bestowed on other men, and if they all be bestowed on seven men, they may have each a considerable majority, and also be chosen. This indeed is a very rare combination: but the bestowing all the votes pretty equally upon nine, ten, or eleven men, and chusing them all, is an event too probable not to be guarded against.

2.8.156 If Massachusetts be divided into eight districts, each having about 46,000 inhabitants, and each district directed to chuse one representative, it will be found totally impracticable for the electors of it to meet in one place; and, when they meet in several towns and places in the district, they will vote for different men, and nineteen times in twenty, so scatter their votes, that no one man will have a majority of the whole and be chosen: we must, therefore, take the man who has the most votes, whether he has three quarters, one quarter, or one tenth part of the whole; the inconveniencies of scattering votes will be increased, as men not of the district, as well as those that are in it, may be voted for.

2.8.157 I might add many other observations to evince the superiority and solid advantages of proper district elections, and a choice by a majority, and to

prove, that many evils attend the contrary practice: these evils we must encounter as the constitution now stands.

2.8.158 I see no way to fix elections on a proper footing, and to render tolerably equal and secure the federal representation, but by increasing the representation, so as to have one representative for each district, in which the electors may conveniently meet in one place, and at one time, and chuse by a majority. Perhaps this might be effected pretty generally, by fixing one representative for each twelve thousand inhabitants; dividing, or fixing the principles for dividing the states into proper districts; and directing the electors of each district to the choice, by a majority, of some men having a permanent interest and residence in it. I speak of a representation tolerably equal, &c. because I am still of opinion, that it is impracticable in this extensive country to have a federal representation sufficiently democratic, or substantially drawn from the body of the people: the principles just mentioned may be the best practical ones we can expect to establish. By thus increasing the representation, we not only make it more democratical and secure, strengthen the confidence of the people in it, and thereby render it more nervous and energetic; but it will also enable the people essentially to change, for the better, the principles and forms of elections. To provide for the people's wandering throughout the state for a representative, may sometimes enable them to elect a more brilliant or an abler man, than by confining them to districts, but generally this latitude will be used to pernicious purposes, especially connected with the choice by plurality; when a man in the remote part of the state, perhaps, obnoxious at home, but ambitious and intriguing, may be chosen to represent the people in another part of the state far distant, and by a small part of them, or by a faction, or by a combination of some particular description of men among them. This has been long the case in Great-Britain, it is the case in several of the states, nor do I think that such pernicious practices will be merely possible in our federal concerns, but highly probable. By establishing district elections, we exclude none of the best men from being elected; and we fix what, in my mind, is of far more importance than brilliant talents, I mean a sameness, as to residence and interests, between the representative and his constituents; and by the election by a majority, he is sure to be the man, the choice of more than half of them.

2.8.159 Though it is impossible to put elections on a proper footing as the constitution stands, yet I think regulations respecting them may be introduced of considerable service: it is not only, therefore, important to enquire how they may be made, but also what body has the controuling power over them. An intelligent, free and unbiassed choice of representatives by the people is of the last importance: we must then carefully guard against all combinations, secret arts, and influence to the contrary. Various expedients have been adopted in different countries and states to effect genuine elections; as the constitution now stands, I confess, I do not discover any better than

those adopted in Connecticut, in the choice of counsellers, before mentioned.[96]

The federal representatives are to be chosen every second year (an odd mode of expression). In all the states, except South-Carolina, the people, the same electors, meet twice in that time to elect state representatives. For instance, let the electors in Massachusetts, when they meet to chuse state representatives, put in their votes for eight federal representatives, the number that state may chuse, (merely for distinction sake, we may call these the votes of nomination), and return a list of the men voted for, in the several towns and places, to the legislature, or some proper body; let this list be immediately examined and published, and some proper number, say 15 or 20, who shall have the most votes upon the list, be sent out to the people; and when the electors shall meet the next year to chuse state representatives, let them put in their votes for the eight federal representatives, confining their votes to the proper number so sent out; and let the eight highest of those thus voted for in the two votes (which we may call, by way of distinction, votes of election), be the federal representatives: thus a choice may be made by the people, once in two years, without much trouble and expence, and, I believe, with some degree of security. As soon as the votes of nomination shall be collected and made known, the people will know who are voted for, and who are candidates for their votes the succeeding year; the electors will have near a year to enquire into their characters and politics, and also into any undue means, if any were taken, to bring any of them forward; and such as they find to be the best men, and agreeable to the people, they may vote for in giving the votes of election. By these means the men chosen will ultimately always have a majority, or near a majority, of the votes of the electors, who shall attend and give their votes. The mode itself will lead to the discovery of truth and of political characters, and to prevent private combinations, by rendering them in a great measure of no effect. As the choice is to be made by the people, all combinations and checks must be confined to their votes. No supplying the want of a majority by the legislatures, as in Massachusetts in the choice of senators, &c. can be admitted: the people generally judge right when informed, and, in giving their votes the second time, they may always correct their former errors. 2.8.160

I think we are all sufficiently acquainted with the progress of elections to see, that the regulations, as to times, places, and the manner merely of holding elections, may, under the constitution, easily be made useful or injurious. It is important then to enquire, who has the power to make regulations, and who ought to have it. By the constitution, the state legislatures shall prescribe the times, places, and manner of holding elections, but congress may make or alter such regulations. Power in congress merely to alter those regulations, made by the states, could answer no valuable purposes; the states might make, and congress alter them *ad infinitum:* and when the state should cease to make, or should annihilate its regulations, congress 2.8.161

would have nothing to alter. But the states shall make regulations, and congress may make such regulations as the clause stands: the true construction is, that when congress shall see fit to regulate the times, places, and manner of holding elections, congress may do it, and state regulations, on this head, must cease; for if state regulations could exist, after congress should make a system of regulations, there would, or might, be two incompatible systems of regulations relative to the same subject.

2.8.162 It has been often urged, that congress ought to have power to make these regulations, otherwise the state legislatures, by neglecting to make provision for elections, or by making improper regulations, may destroy the general government. It is very improbable that any state legislature will adopt measures to destroy the representation of its own constituents in congress, especially when the state must, represented in congress or not, pay its proportion of the expence of keeping up the government, and even of the representatives of the other states, and be subject to their laws. Should the state legislatures be disposed to be negligent, or to combine to break up congress, they have a very simple way to do it, as the constitution now stands—they have only to neglect to chuse senators, or to appoint the electors of the president, and vice-president: there is no remedy provided against these last evils: nor is it to be presumed, that if a sufficient number of state legislatures to break up congress, should, by neglect or otherwise, attempt to do it, that the people, who yearly elect those legislatures, would elect under the regulations of congress. These and many other reasons must evince, that it was not merely to prevent an annihilation of the federal government that congress has power to regulate elections.

2.8.163 It has been urged also, that the state legislatures chuse the federal senators, one branch, and may injure the people, who chuse the other, by improper regulations; that therefore congress, in which the people will immediately have one, the representative branch, ought to have power to interfere in behalf of the people, and rectify such improper regulations. The advocates have said much about the opponents dwelling upon possibilities; but to suppose the people will find it necessary to appeal to congress to restrain the oppressions of the state legislatures, is supposing a possibility indeed. Can any man in his senses suppose that the state legislatures, which are so numerous as almost to be the people themselves, all branches of them depending yearly, for the most part, on the elections of the people, will abuse them in regulating federal elections, and make it proper to transfer the power to congress, a body, one branch of which is chosen once in six years by these very legislatures, and the other biennially, and not half so numerous as even the senatorial branches in those legislatures?

2.8.164 Senators are to be chosen by the state legislatures, where there are two branches the appointment must be, I presume, by a concurrent resolution, in passing which, as in passing all other legislative acts each branch will have a negative; this will give the senatorial branch just as much weight in

the appointment as the democratic: the two branches form a legislature only when acting separately, and therefore, whenever the members of the two branches meet, mix and vote individually in one room, for making an election, it is expressly so directed by the constitutions. If the constitution, by fixing the choice to be made by the legislatures, has given each branch an equal vote, as I think it has, it cannot be altered by any regulations.

On the whole, I think, all general principles respecting electors ought to 2.8.165
be carefully established by the constitution, as the qualifications of the electors and of elected: the number of the representatives, and the inhabitants of each given district, called on to chuse a man from among themselves by a majority of votes; leaving it to the legislature only so to regulate, from time to time, the extent of the districts so as to keep the representatives proportionate to the number of inhabitants in the several parts of the country; and so far as regulations as to elections cannot be fixed by the constitution, they ought to be left to the state legislatures, they coming far nearest to the people themselves; at most, congress ought to have power to regulate elections only where a state shall neglect to make them.

The Federal Farmer.

XIII

January 14, 1788.

Dear Sir,

In this letter I shall further examine two clauses in the proposed constitu- 2.8.166
tion respecting appointments to office.[97]—By art. 2. sect. 2. the president shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments, &c. By art. 1, sect. 6. No senator or representative shall, during the term for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time.

Thus the president must nominate, and the senate concur in the appoint- 2.8.167
ment of all federal officers, civil and military, and the senators and representatives are made ineligible only to the few civil offices abovementioned. To preserve the federal government pure and uncorrupt, peculiar precautions relative to appointments to office will be found highly necessary from the very forms and character of the government itself. The honours and emoluments of public offices are the objects in all communities, that ambitious and necessitous men never lose sight of. The honest, the modest,

and the industrious part of the community content themselves, generally, with their private concerns; they do not solicit those offices which are the perpetual source of cabals, intrigues, and contests among men of the former description, men embarrassed, intriguing, and destitute of modesty. Even in the most happy country and virtuous government, corrupt influence in appointments cannot always be avoided; perhaps we may boast of our share of virtue as a people, and if we are only sufficiently aware of the influence, biasses, and prejudices, common to the affairs of men, we may go far towards guarding against the effects of them.

2.8.168 We all agree, that a large standing army has a strong tendency to depress and inslave the people; it is equally true that a large body of selfish, unfeeling, unprincipled civil officers has a like, or a more pernicious tendency to the same point. Military, and especially civil establishments, are the necessary appendages of society; they are deductions from productive labour, and substantial wealth, in proportion to the number of men employed in them; they are oppressive where unnecessarily extended and supported by men unfriendly to the people; they are injurious when too small, and supported by men too timid and dependant. It is of the last importance to decide well upon the necessary number of offices, to fill them with proper characters, and to establish efficiently the means of punctually punishing those officers who may do wrong.

2.8.169 To discern the nature and extent of this power of appointments, we need only to consider the vast number of officers necessary to execute a national system in this extensive country, the prodigious biasses the hopes and expectations of offices have on their conduct, and the influence public officers have among the people—these necessary officers, as judges, state's attornies, clerks, sheriffs, &c. in the federal supreme and inferior courts, admirals and generals, and subordinate officers in the army and navy, ministers, consuls, &c. sent to foreign countries; officers in the federal city, in the revenue, post-office departments, &c. &c. must, probably, amount to several thousands, without taking into view the very inferior ones. There can be no doubt but that the most active men in politics, in and out of congress, will be the foremost candidates for the best of these offices; the man or men who shall have the disposal of them, beyond dispute, will have by far the greatest share of active influence in the government; but appointments must be made, and who shall make them? what modes of appointments will be attended with the fewest inconveniencies? is the question. The senators and representatives are the law makers, create all offices, and whenever they see fit, they impeach and try officers for misconduct; they ought to be in session but part of the year, and as legislators, they must be too numerous to make appointments, perhaps, a few very important ones excepted. In contemplating the necessary officers of the union, there appear to be six different modes in which, in whole or in part, the appointments may be made. 1. By the legislature; 2. by the president and senate—3. by the president and

an executive council—4. by the president alone—5. by the heads of the departments—and 6. by the state governments—Among all these, in my opinion, there may be an advantageous distribution of the power of appointments. In considering the legislators, in relation to the subject before us, two interesting questions particularly arise—1. Whether they ought to be eligible to any offices whatever during the period for which they shall be elected to serve, and even for some time afterwards—and 2. How far they ought to participate in the power of appointments. As to the first, it is true that legislators in foreign countries, or in our state governments, are not generally made ineligible to office: there are good reasons for it; in many countries the people have gone on without ever examining the principles of government. There have been but few countries in which the legislators have been a particular set of men periodically chosen: but the principal reason is, that which operates in the several states, viz. the legislators are so frequently chosen, and so numerous, compared with the number of offices for which they can reasonably consider themselves as candidates, that the chance of any individual member's being chosen, is too small to raise his hopes or expectations, or to have any considerable influence upon his conduct. Among the state legislators, one man in twenty may be appointed in some committee business, &c. for a month or two; but on a fair computation, not one man in a hundred sent to the state legislatures is appointed to any permanent office of profit: directly the reverse of this will evidently be found true in the federal administration. Throughout the United States, about four federal senators, and thirty-three representatives, averaging the elections, will be chosen in a year; these few men may rationally consider themselves as the fairest candidates for a very great number of lucrative offices, which must become vacant in the year, and pretty clearly a majority of the federal legislators, if not excluded, will be mere expectants for public offices. I need not adduce further arguments to establish a position so clear, I need only call to your recollection my observations in a former letter, wherein I endeavoured to shew the fallacy of the argument, that the members must return home and mix with the people.[98] It is said, that men are governed by interested motives, and will not attend as legislators, unless they can, in common with others, be eligible to offices of honor and profit.[99] This will undoubtedly be the case with some men, but I presume only with such men as never ought to be chosen legislators in a free country; an opposite principle will influence good men; virtuous patriots, and generous minds, will esteem it a higher honor to be selected as the guardians of a free people; they will be satisfied with a reasonable compensation for their time and service; nor will they wish to be within the vortex of influence. The valuable effects of this principle of making legislators ineligible to offices for a given time, has never yet been sufficiently attended to or considered: I am assured, that it was established by the convention after long debate, and afterwards, on an unfortunate change of a few members, altered.[100] Could

the federal legislators be excluded in the manner proposed, I think it would be an important point gained; as to themselves, they would be left to act much more from motives consistent with the public good.

2.8.170 In considering the principle of rotation I had occasion to distinguish the condition of a legislator from that of mere official man[101]—We acquire certain habits, feelings, and opinions, as men and citizens—others, and very different ones, from a long continuance in office: It is, therefore, a valuable observation in many bills of rights, that rulers ought frequently to return and mix with the people. A legislature, in a free country, must be numerous; it is in some degree a periodical assemblage of the people, frequently formed—the principal officers in the executive and judicial departments, must have more permanency in office. Hence it may be inferred, that the legislature will remain longer uncorrupted and virtuous; longer congenial to the people, than the officers of those departments. If it is not, therefore, in our power to preserve republican principles, for a series of ages, in all the departments of government, we may a long while preserve them in a well formed legislature. To this end we ought to take every precaution to prevent legislators becoming mere office-men; chuse them frequently, make them recallable, establish rotation among them, make them ineligible to offices, and give them as small a share as possible in the disposal of them. Add to this, a legislature, in the nature of things, is not formed for the detail business of appointing officers; there is also generally an impropriety in the same men's making offices and filling them, and a still greater impropriety in their impeaching and trying the officers they appoint. For these, and other reasons, I conclude, the legislature is not a proper body for the appointment of officers in general. But having gone through with the different modes of appointment, I shall endeavour to shew what share in the distribution of the power of appointments the legislature must, from necessity, rather than from propriety, take. 2. Officers may be appointed by the president and senate—this mode, for general purposes, is clearly not defensible. All the reasoning touching the legislature will apply to the senate; the senate is a branch of the legislature, which ought to be kept pure and unbiassed; it has a part in trying officers for misconduct, and in creating offices, it is too numerous for a council of appointment, or to feel any degree of responsibility: if it has an advantage of the legislature, in being the least numerous, it has a disadvantage in being more unsafe: add to this, the senate is to have a share in the important branch of power respecting treaties. Further, this sexennial senate of 26 members, representing 13 sovereign states, will not, in practice, be found to be a body to advise, but to order and dictate in fact; and the president will be a mere *primus inter pares*. The consequence will be, that the senate, with these efficient means of influence, will not only dictate, probably, to the president, but manage the house, as the constitution now stands; and under appearances of a balanced system, in reality, govern alone. There may also, by this undue connection, be

particular periods when a very popular president may have a very improper influence upon the senate and upon the legislature. A council of appointment must very probably sit all, or near all, the year—the senate will be too important and too expensive a body for this. By giving the senate, directly or indirectly, an undue influence over the representatives, and the improper means of fettering, embarrassing, or controuling the president or executive, we give the government, in the very out set, a fatal and pernicious tendency to that middle undesirable point—aristocracy. When we, as a circumstance not well to be avoided, admit the senate to a share of power in making treaties, and in managing foreign concerns, we certainly progress full far enough towards this most undesirable point in government. For with this power, also, I believe, we must join that of appointing ambassadors, other foreign ministers, and consuls, being powers necessarily connected.—In every point of view, in which I can contemplate this subject, it appears extremely clear to me, that the senate ought not generally to be a council of appointment. The legislature, after the people, is the great fountain of power, and ought to be kept as pure and uncorrupt as possible, from the hankerings, biasses, and contagion of offices—then the streams issuing from it, will be less tainted with those evils. It is not merely the number of impeachments, that are to be expected to make public officers honest and attentive in their business. A general opinion must pervade the community, that the house, the body to impeach them for misconduct, is disinterested, and ever watchful for the public good; and that the judges who shall try impeachments, will not feel a shadow of biass. Under such circumstances, men will not dare transgress, who, not deterred by such accusers and judges, would repeatedly misbehave. We have already suffered many and extensive evils, owing to the defects of the confederation, in not providing against the misconduct of public officers. When we expect the law to be punctually executed, not one man in ten thousand will disobey it: it is the probable chance of escaping punishment that induces men to transgress. It is one important mean to make the government just and honest, rigidly and constantly to hold, before the eyes of those who execute it, punishment, and dismission from office, for misconduct. These are principles no candid man, who has just ideas of the essential features of a free government, will controvert. They are, to be sure, at this period, called visionary, speculative and anti-governmental—but in the true stile of courtiers, selfish politicians, and flatterers of despotism—discerning republican men of both parties see their value. They are said to be of no value, by empty boasting advocates for the constitution, who, by their weakness and conduct, in fact, injure its cause much more than most of its opponents. From their high sounding promises, men are led to expect a defence of it, and to have their doubts removed. When a number of long pieces appear, they, instead of the defence, &c. they expected, see nothing but a parade of names—volumes written without ever coming to the point—cases quoted between which and

ours there is not the least similitude—and partial extracts made from histories and governments, merely to serve a purpose. Some of them, like the true admirers of royal and senatorial robes, would fain prove, that nations who have thought like freemen and philosophers about government, and endeavoured to be free, have often been the most miserable: if a single riot, in the course of five hundred years happened in a free country, if a salary, or the interest of a public or private debt was not paid at the moment, they seem to lay more stress upon these triffles (for triffles they are in a free and happy country) than upon the oppressions of despotic government for ages together. As to the lengthy writer in New-York[102] you mention, I have attentively examined his pieces; he appears to be a candid good-hearted man, to have a good stile, and some plausible ideas; but when we carefully examine his pieces, to see where the strength of them lies; when the mind endeavours to fix on those material parts, which ought to be the essence of all volumnious productions, we do not find them: the writer appears constantly to move on a smooth surface, the part of his work, like the parts of a cob-house, are all equally strong and all equally weak, and all like those works of the boys, without an object; his pieces appear to have but little relation to the great question, whether the constitution is fitted to the condition and character of this people or not. But to return—3. Officers may be appointed by the president and an executive council—when we have assigned to the legislature the appointment of a few important officers—to the president and senate the appointment of those concerned in managing foreign affairs—to the state governments the appointment of militia officers, and authorise the legislature, by legislative acts, to assign to the president alone, to the heads of the departments, and courts of law respectively, the appointment of many inferior officers; we shall then want to lodge some where a residuum of power, a power to appoint all other necessary officers, as established by law. The fittest receptacle for this residuary power is clearly, in my opinion, the first executive magistrate, advised and directed by an executive council of seven or nine members, periodically chosen from such proportional districts as the union may for the purpose be divided into. The people may give their votes for twice the number of counsellers wanted, and the federal legislature take twice the number also from the highest candidates, and from among them chuse the seven or nine, or number wanted. Such a council may be rationally formed for the business of appointments; whereas the senate, created for other purposes, never can be—Such councils forms a feature in some of the best executives in the union—they appear to be essential to every first magistrate, who may frequently want advice.

2.8.171 To authorise the president to appoint his own council would be unsafe: to give the sole appointment of it to the legislature, would confer an undue and unnecessary influence upon that branch. Such a council for a year would be less expensive than the senate for four months. The president may nominate, and the counsellers always be made responsible for their advice and

opinions, by recording and signing whatever they advise to be done. They and the president, to many purposes, will properly form an independent executive branch; have an influence unmixed with the legislative, which the executive never can have while connected with a powerful branch of the legislature. And yet the influence arising from the power of appointments be less dangerous, because in less dangerous hands—hands properly adequate to possess it. Whereas the senate, from its character and situation, will add a dangerous weight to the power itself, and be far less capable of responsibility, than the council proposed. There is another advantage the residuum of power, as to appointments, which the president and council need possess, is less than that the president and senate must have. And as such a council would render the sessions of the senate unnecessary many months in the year, the expences of the government would not be increased, if they would not be lessened by the institution of such a council. I think I need not dwell upon this article, as the fitness of this mode of appointment will perhaps amply appear by the evident unfitness of the others.

4. Officers may be appointed by the president alone. It has been almost universally found, when a man has been authorized to exercise power alone, he has never done it alone; but, generally, aided his determinations by, and rested on the advice and opinions of others. And it often happens when advice is wanted, the worst men, the most interested creatures, the worst advice is at hand, obtrude themselves, and misdirect the mind of him who would be informed and advised. It is very seldom we see a single executive depend on accidental advice and assistance; but each single executive has, almost always, formed to itself a regular council, to be assembled and consulted on important occasions; this proves that a select council, of some kind, is, by experience, generally found necessary and useful. But in a free country, the exercise of any considerable branch of power ought to be under some checks and controuls. As to this point, I think the constitution stands well, the legislature may, when it shall deem it expedient, from time to time, authorise the president alone to appoint particular inferior officers, and when necessary to take back the power. His power, therefore, in this respect, may always be increased or decreased by the legislature, as experience, the best instructor, shall direct: always keeping him, by the constitution, within certain bounds. 2.8.172

The Federal Farmer.

XIV

January 17, 1788.

Dear Sir,

To continue the subject of appointments:—Officers, in the fifth place, may be appointed by the heads of departments or courts of law. Art. 2. sect. 2.8.173

2. respecting appointments, goes on—"But congress may by law vest the appointment of such inferior officers as they think proper in the president alone, in the courts of law, or in the heads of departments." The probability is, as the constitution now stands, that the senate, a branch of the legislature, will be tenacious of the power of appointment, and much too sparingly part with a share of it to the courts of law, and heads of departments. Here again the impropriety appears of the senate's having, generally, a share in the appointment of officers. We may fairly presume, that the judges, and principal officers in the departments, will be able well informed men in their respective branches of business; that they will, from experience, be best informed as to proper persons to fill inferior offices in them; that they will feel themselves responsible for the execution of their several branches of business, and for the conduct of the officers they may appoint therein.—From these, and other considerations, I think we may infer, that impartial and judicious appointments of subordinate officers will, generally, be made by the courts of law, and the heads of departments. This power of distributing appointments, as circumstances may require, into several hands, in a well formed disinterested legislature, might be of essential service, not only in promoting beneficial appointments, but, also, in preserving the balance in government: a feeble executive may be strengthened and supported by placing in its hands more numerous appointments; an executive too influential may be reduced within proper bounds, by placing many of the inferior appointments in the courts of law, and heads of departments; nor is there much danger that the executive will be wantonly weakened or strengthened by the legislature, by thus shifting the appointments of inferior officers, since all must be done by legislative acts, which cannot be passed without the consent of the executive, or the consent of two-thirds of both branches—a good legislature will use this power to preserve the balance and perpetuate the government. Here again we are brought to our ultimatum:—is the legislature so constructed as to deserve our confidence?

2.8.174 6. Officers may be appointed by the state governments. By art. 1. sect. 8. the respective states are authorised exclusively to appoint the militia-officers. This not only lodges the appointments in proper places, but it also tends to distribute and lodge in different executive hands the powers of appointing to offices, so dangerous when collected into the hands of one or a few men.

2.8.175 It is a good general rule, that the legislative, executive, and judicial powers, ought to be kept distinct; but this, like other general rules, has its exceptions; and without these exceptions we cannot form a good government, and properly balance its parts,[103] and we can determine only from reason, experience, and a critical inspection of the parts of the government, how far it is proper to intermix those powers. Appointment, I believe, in all mixed governments, have been assigned to different hands—some are made by the executive, some by the legislature, some by the judges and some by

the people. It has been thought adviseable by the wisest nations, that the legislature should so far exercise executive and judicial powers as to appoint some officers, judge of the elections of its members, and impeach and try officers for misconduct—that the executive should have a partial share in legislation—that judges should appoint some subordinate officers, and regulate so far as to establish rules for their own proceedings. Where the members of the government, as the house, the senate, the executive, and judiciary, are strong and complete, each in itself, the balance is naturally produced, each party may take the powers congenial to it, and we have less need to be anxious about checks, and the subdivision of powers.

If after making the deductions, already alluded to, from the general power to appoint federal officers the residuum shall be thought to be too large and unsafe, and to place an undue influence in the hands of the president and council, a further deduction may be made, with many advantages, and, perhaps, with but a few inconveniencies; and that is, by giving the appointment of a few great officers to the legislature—as of the commissioners of the treasury—of the comptroller, treasurer, master coiner, and some of the principal officers in the money department—of the sheriffs or marshalls of the United States—of states attornies, secretary of the home department, and secretary at war, perhaps, of the judges of the supreme court—of major-generals and admirals.[104] The appointments of these officers, who may be at the heads of the great departments of business, in carrying into execution the national system, involve in them a variety of considerations; they will not often occur, and the power to make them ought to remain in safe hands. Officers of the above description are appointed by the legislatures in some of the states, and in some not. We may, I believe, presume that the federal legislature will possess sufficient knowledge and discernment to make judicious appointments: however, as these appointments by the legislature tend to increase a mixture of power, to lessen the advantages of impeachments and responsibility, I would by no means contend for them any further than it may be necessary for reducing the power of the executive within the bounds of safety. To determine with propriety how extensive power the executive ought to possess relative to appointments, we must also examine the forms of it, and its other powers; and these forms and other powers I shall now proceed briefly to examine. 2.8.176

By art. 2. sect. 1. the executive power shall be vested in a president elected for four years, by electors to be appointed from time to time, in such manner as the state legislatures shall direct—the electors to be equal in numbers to the federal senators and representatives: but congress may determine the time of chusing senators, and the day on which they shall give their votes; and if no president be chosen by the electors, by a majority of votes, the states, as states in congress, shall elect one of the five highest on the list for president. It is to be observed, that in chusing the president, the principle of electing by a majority of votes is adopted; in chusing the vice- 2.8.177

president, that of electing by a plurality. Viewing the principles and checks established in the election of the president, and especially considering the several states may guard the appointment of the electors as they shall judge best, I confess there appears to be a judicious combination of principles and precautions.[105] Were the electors more numerous than they will be, in case the representation be not increased, I think, the system would be improved; not that I consider the democratic character so important in the choice of the electors as in the choice of representatives: be the electors more or less democratic, the president will be one of the very few of the most elevated characters. But there is danger, that a majority of a small number of electors may be corrupted and influenced, after appointed electors, and before they give their votes, especially if a considerable space of time elapse between the appointment and voting. I have already considered the advisory council in the executive branch: there are two things further in the organization of the executive, to which I would particularly draw your attention; the first, which, is a single executive, I confess, I approve; the second, by which any person from period to period may be re-elected president, I think very exceptionable.

2.8.178 Each state in the union has uniformly shewn its preference for a single executive, and generally directed the first executive magistrate to act in certain cases by the advice of an executive council. Reason, and the experience of enlightened nations, seem justly to assign the business of making laws to numerous assemblies; and the execution of them, principally, to the direction and care of one man. Independent of practice, a single man seems to be peculiarly well circumstanced to superintend the execution of laws with discernment and decision, with promptitude and uniformity: the people usually point out a first man—he is to be seen in civilized as well as uncivilized nations—in republics as well as in other governments. In every large collection of people there must be a visible point serving as a common centre in the government, towards which to draw their eyes and attachments. The constitution must fix a man, or a congress of men, superior in the opinion of the people to the most popular men in the different parts of the community, else the people will be apt to divide and follow their respective leaders.[106] Aspiring men, armies and navies, have not often been kept in tolerable order by the decrees of a senate or an executive council. The advocates for lodging the executive power in the hands of a number of equals, as an executive council, say, that much wisdom may be collected in such a council, and that it will be safe; but they agree, that it cannot be so prompt and responsible as a single man—they admit that such a council will generally consist of the aristocracy, and not stand so indifferent between it and the people as a first magistrate. But the principal objection made to a single man is, that when possessed of power he will be constantly struggling for more, disturbing the government, and encroaching on the rights of others. It must be admitted, that men, from the monarch down to the porter,

are constantly aiming at power and importance; and this propensity must be as constantly guarded against in the forms of the government. Adequate powers must be delegated to those who govern, and our security must be in limiting, defining, and guarding the exercise of them, so that those given shall not be abused, or made use of for openly or secretly seizing more. Why do we believe this abuse of power peculiar to a first magistrate? Is it because in the wars and contests of men, one man has often established his power over the rest? Or are men naturally fond of accumulating powers in the hands of one man? I do not see any similitude between the cases of those tyrants, who have sprung up in the midst of wars and tumults, and the cases of limited executives in established governments; nor shall we, on a careful examination, discover much likeness between the executives in Sweden, Denmark, Holland, &c. which have, from time to time, increased their powers, and become more absolute, and the executives, whose powers are well ascertained and defined, and which remain, by the constitution, only for a short and limited period in the hands of any one man or family. A single man, or family, can long and effectually direct its exertions to one point. There may be many favourable opportunities in the course of a man's life to seize on additional powers, and many more where powers are hereditary; and there are many circumstances favourable to usurpations, where the powers of the man or family are undefined, and such as often may be unduly extended before the people discover it. If we examine history attentively, we shall find that such exertions, such opportunities, and such circumstances as these have attended all the executives which have usurped upon the rights of the people, and which appear originally to have been, in some degree, limited. Admitting that moderate and even well defined powers, long in the hands of the same man or family, will, probably, be unreasonably increased, it will not follow that even extensive powers placed in the hands of a man only for a few years will be abused. The Roman consuls and Carthagenian suffetes possessed extensive powers while in office; but being annually appointed, they but seldom, if ever, abused them. The Roman dictators often possessed absolute power while in office; but usually being elected for short periods of time, no one of them for ages usurped upon the rights of the people. The kings of France, Spain, Sweden, Denmark, &c. have become absolute merely from the encroachments and abuse of power made by the nobles. As to kings, and limited monarchs, generally, history furnishes many more instances in which their powers have been abridged or annihilated by the nobles or people, or both, than in which they have been increased or made absolute; and in almost all the latter cases we find the people were inattentive and fickle, and evidently were not born to be free. I am the more particular respecting this subject, because I have heard many mistaken observations relative to it. Men of property, and even men who hold powers for themselves and posterity, have too much to lose, wantonly to hazard a shock of the political system; the game must be large, and the

chance of winning great, to induce them to risque what they have, for the uncertain prospect of gaining more. Our executive may be altogether elective, and possess no power, but as the substitute of the people, and that well limited, and only for a limited time. The great object is, in a republican government, to guard effectually against perpetuating any portion of power, great or small, in the same man or family; this perpetuation of power is totally uncongenial to the true spirit of republican governments: on the one hand the first executive magistrate ought to remain in office so long as to avoid instability in the execution of the laws; on the other, not so long as to enable him to take any measures to establish himself. The convention, it seems, first agreed that the president should be chosen for seven years, and never after to be eligible. Whether seven years is a period too long or not, is rather matter of opinion; but clear it is, that this mode is infinitely preferable to the one finally adopted. When a man shall get the chair, who may be re-elected, from time to time, for life, his greatest object will be to keep it; to gain friends and votes, at any rate; to associate some favourite son with himself, to take the office after him: whenever he shall have any prospect of continuing the office in himself and family, he will spare no artifice, no address, and no exertions, to increase the powers and importance of it; the servile supporters of his wishes will be placed in all offices, and tools constantly employed to aid his views and sound his praise. A man so situated will have no permanent interest in the government to lose, by contests and convulsions in the state, but always much to gain, and frequently the seducing and flattering hope of succeeding. If we reason at all on the subject, we must irresistably conclude, that this will be the case with nine-tenths of the presidents; we may have, for the first president, and, perhaps, one in a century or two afterwards (if the government should withstand the attacks of others) a great and good man, governed by superior motives; but these are not events to be calculated upon in the present state of human nature.

2.8.179 A man chosen to this important office for a limited period, and always afterwards rendered, by the constitution, ineligible, will be governed by very different considerations: he can have no rational hopes or expectations of retaining his office after the expiration of a known limited time, or of continuing the office in his family, as by the constitution there must be a constant transfer of it from one man to another, and consequently from one family to another. No man will wish to be a mere cypher at the head of the government: the great object of each president then will be, to render his government a glorious period in the annals of his country. When a man constitutionally retires from office, he retires without pain; he is sensible he retires because the laws direct it, and not from the success of his rivals, nor with that public disapprobation which being left out, when eligible, implies. It is said, that a man knowing that at a given period he must quit his office, will unjustly attempt to take from the public, and lay in store the means of

support and splendour in his retirement;[107] there can, I think, be but very little in this observation. The same constitution that makes a man eligible for a given period only, ought to make no man eligible till he arrive to the age of forty or forty-five years: if he be a man of fortune, he will retire with dignity to his estate; if not, he may, like the Roman consuls, and other eminent characters in republics, find an honorable support and employment in some respectable office. A man who must, at all events, thus leave his office, will have but few or no temptations to fill its dependant offices with his tools, or any particular set of men; whereas the man constantly looking forward to his future elections, and, perhaps, to the aggrandizement of his family, will have every inducement before him to fill all places with his own props and dependants. As to public monies, the president need handle none of them, and he may always rigidly be made account for every shilling he shall receive.

On the whole, it would be, in my opinion, almost as well to create a limited monarchy at once, and give some family permanent power and interest in the community, and let it have something valuable to itself to lose in convulsions in the state, and in attempts of usurpation, as to make a first magistrate eligible for life, and to create hopes and expectations in him and his family, of obtaining what they have not. In the latter case, we actually tempt them to disturb the state, to foment struggles and contests, by laying before them the flattering prospect of gaining much in them without risking any thing. 2.8.180

The constitution provides only that the president shall hold his office during the term of four years; that, at most, only implies, that one shall be chosen every fourth year; it also provides, that in case of the removal, death, resignation, or inability, both of the president and vice-president, congress may declare what officer shall act as president; and that such officers shall act accordingly, until the disability be removed, *or a president shall be elected:* it also provides that congress may determine the time of chusing electors, and the day on which they shall give their votes. Considering these clauses together, I submit this question—whether in case of a vacancy in the office of president, by the removal, death, resignation, or inability of the president and vice-president, and congress should declare, that a certain officer, as secretary for foreign affairs, for instance, shall act as president, and suffer such officer to continue several years, or even for his life, to act as president, by omitting to appoint the time for chusing electors of another president, it would be any breach of the constitution? This appears to me to be an intended provision for supplying the office of president, not only for any remaining portion of the four years, but in cases of emergency, until another president shall be elected; and that at a period beyond the expiration of the four years: we do not know that it is impossible; we do not know that it is improbable, in case a popular officer should thus be declared the acting president, but that he might continue for 2.8.181

life, and without any violent act, but merely by neglects and delays on the part of congress.

2.8.182 I shall conclude my observations on the organization of the legislature and executive, with making some remarks, rather as a matter of amusement, on the branch, or partial negative, in the legislation:—The third branch in the legislature may answer three valuable purposes, to impede in their passage hasty and intemperate laws, occasionally to assist the senate or people, and to prevent the legislature from encroaching upon the executive or judiciary. In Great Britain the king has a complete negative upon all laws, but he very seldom exercises it. This may be well lodged in him, who possesses strength to support it, and whose family has independent and hereditary interests and powers, rights and prerogatives, in the government, to defend: but in a country where the first executive officer is elective, and has no rights, but in common with the people, a partial negative in legislation, as in Massachusetts and New-York, is, in my opinion, clearly best: in the former state, as before observed, it is lodged in the governor alone; in the latter, in the governor, chancellor, and judges of the supreme court—the new constitution lodges it in the president. This is simply a branch of legislative power, and has in itself no relation to executive or judicial powers. The question is, in what hands ought it to be lodged, to answer the three purposes mentioned the most advantageously? The prevailing opinion seems to be in favour of vesting it in the hands of the first executive magistrate. I will not say this opinion is ill founded. The negative, in one case, is intended to prevent hasty laws, not supported and revised by two-thirds of each of the two branches; in the second, it is to aid the weaker branch; and in the third, to defend the executive and judiciary. To answer these ends, there ought, therefore, to be collected in the hands which hold this negative, firmness, wisdom, and strength; the very object of the negative is occasional opposition to the two branches. By lodging it in the executive magistrate, we give him a share in making the laws, which he must execute; by associating the judges with him, as in New York, we give them a share in making the laws, upon which they must decide as judicial magistrates; this may be a reason for excluding the judges: however, the negative in New-York is certainly well calculated to answer its great purposes: the governor and judges united must possess more firmness and strength, more wisdom and information, than either alone, and also more of the confidence of the people; and as to the balance among the departments, why should the executive alone hold the scales, and the judicial be left defenceless? I think the negative in New-York is found best in practice; we see it there frequently and wisely put upon the measures of the two branches; whereas in Massachusetts it is hardly ever exercised, and the governor, I believe, has often permitted laws to pass to which he had substantial objections, but did not make them; he, however, it is to be observed, is annually elected.

The Federal Farmer.

XV

January 18, 1788.

Dear Sir,

Before I proceed to examine particularly the powers vested, or which ought to be, vested in each branch of the proposed government, I shall briefly examine the organization of the remaining branch, the judicial, referring the particular examining of its powers to some future letters.[108] 2.8.183

In forming this branch, our objects are—a fair and open, a wise and impartial interpretation of the laws—a prompt and impartial administration of justice, between the public and individuals, and between man and man. I believe, there is no feature in a free government more difficult to be well formed than this, especially in an extensive country, where the courts must be numerous, or the citizens travel to obtain justice. 2.8.184

The confederation impowers congress to institute judicial courts in four cases. 1. For settling disputes between individual states. 2. For determining, finally, appeals in all cases of captures. 3. For the trial of piracies and felonies committed on the high seas: And, 4. For the administration of martial law in the army and navy. The state courts in all other cases possess the judicial powers, in all questions arising on the laws of nations, of the union, and the states individually—nor does congress appear to have any controul over state courts, judges or officers. The business of the judicial department is, properly speaking, judicial in part, in part executive, done by judges and juries, by certain recording and executive officers, as clerks, sheriffs, etc. they are all properly limbs, or parts, of the judicial courts, and have it in charge, faithfully to decide upon, and execute the laws, in judicial cases, between the public and individuals, between man and man. The recording and executive officers, in this department, may well enough be formed by legislative acts, from time to time: but the offices, the situation, the powers and duties of judges and juries, are too important, as they respect the political system, as well as the administration of justice, not to be fixed on general principles by the constitution. It is true, the laws are made by the legislature; but the judges and juries, in their interpretations, and in directing the execution of them, have a very extensive influence for preserving or destroying liberty, and for changing the nature of the government. It is an observation of an approved writer, that judicial power is of such a nature, that when we have ascertained and fixed its limits, with all the caution and precision we can, it will yet be formidable, somewhat arbitrary and despotic—that is, after all our cares, we must leave a vast deal to the discretion and interpretation—to the wisdom, integrity, and politics of the judges[109]—These men, such is the state even of the best laws, may do wrong, perhaps, in a thousand cases, sometimes with, and sometimes without design, yet it may be impracticable to convict them of misconduct. These considerations shew, how cautious a free people ought to be in form- 2.8.185

ing this, as well as the other branches of their government, especially when connected with other considerations equally deserving of notice and attention. When the legislature makes a bad law, or the first executive magistrates usurp upon the rights of the people, they discover the evil much sooner, than the abuses of power in the judicial department; the proceedings of which are far more intricate, complex, and out of their immediate view. A bad law immediately excites a general alarm; a bad judicial determination, though not less pernicious in its consequences, is immediately felt, probably, by a single individual only, and noticed only by his neighbours, and a few spectators in the court. In this country, we have been always jealous of the legislature, and especially the executive; but not always of the judiciary: but very few men attentively consider the essential parts of it, and its proceedings, as they tend to support or to destroy free government: only a few professional men are in a situation properly to do this; and it is often alledged, that instances have not frequently occurred, in which they have been found very alert watchmen in the cause of liberty, or in the cause of democratic republics. Add to these considerations, that particular circumstances exist at this time to increase our inattention to limiting properly the judicial powers, we may fairly conclude, we are more in danger of sowing the seeds of arbitrary government in this department than in any other.[110] In the unsettled state of things in this country, for several years past, it has been thought, that our popular legislatures have, sometimes, departed from the line of strict justice, while the law courts have shewn a disposition more punctually to keep to it. We are not sufficiently attentive to the circumstances, that the measures of popular legislatures naturally settle down in time, and gradually approach a mild and just medium; while the rigid systems of the law courts naturally become more severe and arbitrary, if not carefully tempered and guarded by the constitution, and by laws, from time to time. It is true, much has been written and said about some of these courts lately, in some of the states; but all has been about their fees, &c. and but very little to the purposes, as to their influence upon the freedom of the government.

2.8.186 By art. 3. sect. 1. the judicial power of the United States shall be vested in one supreme court, and in such inferior courts, as congress may, from time to time, ordain and establish—the judges of them to hold their offices during good behaviour, and to receive, at stated times, a compensation for their services, which shall not be diminished during their continuance in office; but which, I conceive, may be increased. By the same art. sect. 2. the supreme court shall have original jurisdiction, "in all cases affecting ambassadors, and other public ministers, and consuls, and those in which a state shall be a party, and appellate jurisdiction, *both as to law and fact*, in all other federal causes, with such exceptions, and under such regulations, as the congress shall make." By the same section, the judicial power shall extend in law and equity to all the federal cases therein enumerated. By the

same section the jury trial, in criminal causes, except in cases of impeachment, is established; but not in civil causes, and the whole state may be considered as the vicinage in cases of crimes. These clauses present to view the constitutional features of the federal judiciary: this has been called a monster by some of the opponents, and some, even of the able advocates, have confessed they do not comprehend it. For myself, I confess, I see some good things in it, and some very extraordinary ones. "There shall be one supreme court." There ought in every government to be one court, in which all great questions in law shall finally meet and be determined: in Great-Britain, this is the house of lords, aided by all the superior judges; in Massachusetts, it is, at present, the supreme judicial court, consisting of five judges; in New-York, by the constitution, it is a court consisting of the president of the senate, the senators, chancellor and judges of the supreme court; and in the United States the federal supreme court, or this court in the last report, may, by the legislature, be made to consist of three, five, fifty, or any other number of judges. The inferior federal courts are left by the constitution to be instituted and regulated altogether as the legislature shall judge best; and it is well provided, that the judges shall hold their offices during good behaviour. I shall not object to the line drawn between the original and appellate jurisdiction of the supreme court; though should we for safety, &c. be obliged to form a numerous supreme court, and place in it a considerable number of respectable characters, it will be found inconvenient for such a court, originally, to try all the causes affecting ambassadors, consuls, &c. Appeals may be carried up to the supreme court, under such regulations as congress shall make. Thus far the legislature does not appear to be limited to improper [proper?] rules or principles in instituting judicial courts: indeed the legislature will have full power to form and arrange judicial courts in the federal cases enumerated, at pleasure, with these eight exceptions only. 1. There can be but one supreme federal judicial court. 2. This must have jurisdiction as to law and fact in the appellate causes. 3. Original jurisdiction, when foreign ministers and the states are concerned. 4. The judges of the judicial courts must continue in office during good behaviour—and, 5. Their salaries cannot be diminished while in office. 6. There must be a jury trial in criminal causes. 7. The trial of crimes must be in the state where committed—and, 8. There must be two witnesses to convict of treason.

In all other respects Congress may organize the judicial department according to their discretion; the importance of this power, among others proposed by the legislature (perhaps necessarily) I shall consider hereafter. Though there must, by the constitution, be but one judicial court, in which all the rays of judicial powers as to law, equity, and fact, in the cases enumerated must meet; yet this may be made by the legislature, a special court, consisting of any number of respectable characters or officers, the federal legislators excepted, to superintend the judicial department, to try 2.8.187

the few causes in which foreign ministers and the states may be concerned, and to correct errors, as to law and fact, in certain important causes on appeals. Next below this judicial head, there may be several courts, such as are usually called superior courts, as a court of chancery, a court of criminal jurisdiction, a court of civil jurisdiction, a court of admiralty jurisdiction, a court of exchequer, &c. giving an appeal from these respectively to the supreme judicial court. These superior courts may be considered as so many points to which appeals may be brought up, from the various inferior courts, in the several branches of judicial causes. In all these superior and inferior courts, the trial by jury may be established in all cases, and the law and equity properly separated. In this organization, only a few very important causes, probably, would be carried up to the supreme court.—The superior courts would, finally, settle almost all causes. This organization, so far as it would respect questions of law, inferior, superior, and a special supreme court, would resemble that of New-York in a considerable degree, and those of several other states. This, I imagine, we must adopt, or else the Massachusetts plan; that is, a number of inferior courts, and one superior or supreme court, consisting of three, or five, or seven judges, in which one supreme court all the business shall be immediately collected from the inferior ones. The decision of the inferior courts, on either plan, probably will not much be relied on; and on the latter plan, there must be a prodigious accumulation of powers and business in all cases touching law, equity and facts, and all kinds of causes in a few hands, for whose errors of ignorance or design, there will be no possible remedy. As the legislature may adopt either of these, or any other plan, I shall not dwell longer on this subject.

2.8.188 In examining the federal judiciary, there appears to be some things very extraordinary and very peculiar. The judges or their friends may seize every opportunity to raise the judges salaries; but by the constitution they cannot be diminished. I am sensible how important it is that judges shall always have adequate and certain support; I am against their depending upon annual or periodical grants, because these may be withheld, or rendered too small by the dissent or narrowness of any one branch of the legislature; but there is a material distinction between periodical grants, and salaries held under permanent and standing laws: the former at stated periods cease, and must be renewed by the consent of all and every part of the legislature; the latter continue of course, and never will cease or be lowered, unless all parts of the legislature agree to do it. A man has as permanent an interest in his salary fixed by a standing law, so long as he may remain in office, as in any property he may possess; for the laws regulating the tenure of all property, are always liable to be altered by the legislature. The same judge may frequently be in office thirty or forty years; there may often be times, as in cases of war, or very high prices, when his salary may reasonably be increased one half or more; in a few years money may become scarce again,

and prices fall, and his salary, with equal reason and propriety be decreased and lowered: not to suffer this to be done by consent of all the branches of the legislature, is, I believe, quite a novelty in the affairs of government. It is true, by a very forced and unnatural construction, the constitution of Massachusetts, by the governor and minority in the legislature, was made to speak this kind of language. Another circumstance ought to be considered; the mines which have been discovered are gradually exhausted, and the precious metals are continually wasting: hence the probability is, that money, the nominal representative of property, will gradually grow scarcer hereafter, and afford just reasons for gradually lowering salaries. The value of money depends altogether upon the quantity of it in circulation, which may be also decreased, as well as encreased, from a great variety of causes.

The supreme court, in cases of appeals, shall have jurisdiction both as to law and fact: that is, in all civil causes carried up the supreme court by appeals, the court, or judges, shall try the fact and decide the law. Here an essential principle of the civil law is established, and the most noble and important principle of the common law exploded. To dwell a few minutes on this material point: the supreme court shall have jurisdiction both as to law and fact. What is meant by court? Is the jury included in the term, or is it not?[111] I conceive it is not included: and so the members of convention, I am very sure, understand it. Court, or curia, was a term well understood long before juries existed; the people, and the best writers, in countries where there are no juries, uniformly use the word court, and can only mean by it the judge or judges who determine causes: also, in countries where there are juries we express ourselves in the same manner; we speak of the court of probate, court of chancery, justices court, alderman's court, &c. in which there is no jury. In our supreme courts, common pleas, &c. in which there are jury trials, we uniformly speak of the court and jury, and consider them as distinct. Were it necessary I might site a multitude of cases from law books to confirm, beyond controversy, this position, that the jury is not included, or a part of the court. 2.8.189

But the supreme court is to have jurisdiction as to law and fact, under such regulations as congress shall make. I confess it is impossible to say how far congress may, with propriety, extend their regulations in this respect. I conceive, however, they cannot by any reasonable construction go so far as to admit the jury, on true common law principles, to try the fact, and give a general verdict. I have repeatedly examined this article: I think the meaning of it is, that the judges in all final questions, as to property and damages, shall have complete jurisdiction, to consider the whole cause, to examine the facts, and on a general view of them, and on principles of equity, as well as law, to give judgment.

As the trial by jury is provided for in criminal causes, I shall confine my observations to civil causes—and in these, I hold it is the established right of 2.8.190

the jury by the common law, and the fundamental laws of this country, to give a general verdict in all cases when they chuse to do it, to decide both as to law and fact, whenever blended together in the issue put to them. Their right to determine as to facts will not be disputed, and their right to give a general verdict has never been disputed, except by a few judges and lawyers, governed by despotic principles. Coke, Hale, Holt, Blackstone, De Lome, and almost every other legal or political writer, who has written on the subject, has uniformly asserted this essential and important right of the jury. Juries in Great-Britain and America have universally practised accordingly. Even Mansfield, with all his wishes about him, dare not directly avow the contrary. What fully confirms this point is, that there is no instance to be found, where a jury was ever punished for finding a general verdict, when a special one might, with propriety, have been found. The jury trial, especially politically considered, is by far the most important feature in the judicial department in a free country, and the right in question is far the most valuable part, and the last that ought to be yielded, of this trial.[112] Juries are constantly and frequently drawn from the body of the people, and freemen of the country; and by holding the jury's right to return a general verdict in all cases sacred, we secure to the people at large, their just and rightful controul in the judicial department. If the conduct of judges shall be severe and arbitrary, and tend to subvert the laws, and change the forms of government, the jury may check them, by deciding against their opinions and determinations, in similar cases. It is true, the freemen of a country are not always minutely skilled in the laws, but they have common sense in its purity, which seldom or never errs in making and applying laws to the condition of the people, or in determining judicial causes, when stated to them by the parties. The body of the people, principally, bear the burdens of the community; they of right ought to have a controul in its important concerns, both in making and executing the laws, otherwise they may, in a short time, be ruined. Nor is it merely this controul alone we are to attend to: the jury trial brings with it an open and public discussion of all causes, and excludes secret and arbitrary proceedings. This, and the democratic branch in the legislature, as was formerly observed, are the means by which the people are let into the knowledge of public affairs—are enabled to stand as the guardians of each others rights, and to restrain, by regular and legal measures, those who otherwise might infringe upon them. I am not unsupported in my opinion of the value of the trial by jury; not only British and American writers, but De Lome, and the most approved foreign writers, hold it to be the most valuable part of the British constitution, and indisputably the best mode of trial ever invented.

2.8.191 It was merely by the intrigues of the popish clergy, and of the Norman lawyers, that this mode of trial was not used in maritime, ecclesiastical, and military courts, and the civil law proceedings were introduced; and, I believe, it is more from custom and prejudice, than for any substantial rea-

sons, that we do not in all the states establish the jury in our maritime as well as other courts.

In the civil law process the trial by jury is unknown; the consequence is, 2.8.192
that a few judges and dependant officers, possess all the power in the judicial department. Instead of the open fair proceedings of the common law, where witnesses are examined in open court, and may be cross examined by the parties concerned—where council is allowed, &c. we see in the civil law process judges alone, who always, long previous to the trial, are known and often corrupted by ministerial influence, or by parties. Judges once influenced, soon become inclined to yield to temptations, and to decree for him who will pay the most for their partiality. It is, therefore, we find in the Roman, and almost all governments, where judges alone possess the judicial powers and try all cases, that bribery has prevailed. This, as well as the forms of the courts, naturally lead to secret and arbitrary proceedings—to taking evidence secretly—exparte, &c. to perplexing the cause—and to hasty decisions:—but, as to jurors, it is quite impracticable to bribe or influence them by any corrupt means; not only because they are untaught in such affairs, and possess the honest characters of the common freemen of a country; but because it is not, generally, known till the hour the cause comes on for trial, what persons are to form the jury.

But it is said, that no words could be found by which the states could 2.8.193
agree to establish the jury-trial in civil causes.[113] I can hardly believe men to be serious, who make observations to this effect. The states have all derived judicial proceedings principally from one source, the British system; from the same common source the American lawyers have almost universally drawn their legal information. All the states have agreed to establish the trial by jury, in civil as well as in criminal causes. The several states, in congress, found no difficulty in establishing it in the Western Territory, in the ordinance passed in July 1787. We find, that the several states in congress, in establishing government in that territory, agreed, that the inhabitants of it, should always be entitled to the benefit of the trial by jury. Thus, in a few words, the jury trial is established in its full extent; and the convention with as much ease, have established the jury trial in criminal cases. In making a constitution, we are substantially to fix principles.—If in one state, damages on default are assessed by a jury, and in another by the judges—if in one state jurors are drawn out of a box, and in another not—if there be other trifling variations, they can be of no importance in the great question. Further, when we examine the particular practices of the states, in little matters in judicial proceedings, I believe we shall find they differ near as much in criminal processes as in civil ones. Another thing worthy of notice in this place—the convention have used the word equity, and agreed to establish a chancery jurisdiction; about the meaning and extent of which, we all know, the several states disagree much more than about jury trials—in adopting the latter, they have very generally pursued the British plan; but as

to the former, we see the states have varied, as their fears and opinions dictated.

2.8.194 By the common law, in Great Britain and America, there is no appeal from the verdict of the jury, as to facts, to any judges whatever—the jurisdiction of the jury is complete and final in this; and only errors in law are carried up to the house of lords, the special supreme court in Great Britain; or to the special supreme courts in Connecticut, New-York, New-Jersey, &c. Thus the juries are left masters as to facts: but, by the proposed constitution, directly the opposite principle is established. An appeal will lay in all appellate causes from the verdict of the jury, even as to mere facts, to the judges of the supreme court. Thus, in effect, we establish the civil law in this point; for if the jurisdiction of the jury be not final, as to facts, it is of little or no importance.

2.8.195 By art. 3. sect. 2. "the judicial power shall extend to all cases in law and equity, arising under this constitution, the laws of the United States," &c. What is here meant by equity? what is equity in a case arising under the constitution?[114] possibly the clause might have the same meaning, were the words "in law and equity," omitted. Cases in law must differ widely from cases in law and equity. At first view, by thus joining the word equity with the word law, if we mean any thing, we seem to mean to give the judge a discretionary power. The word equity, in Great Britain, has in time acquired a precise meaning—chancery proceedings there are now reduced to system—but this is not the case in the United States. In New-England, the judicial courts have no powers in cases in equity, except those dealt out to them by the legislature, in certain limited portions, by legislative acts. In New-York, Maryland, Virginia, and South-Carolina, powers to decide, in cases of equity, are vested in judges distinct from those who decide in matters of law: and the states generally seem to have carefully avoided giving unlimitedly, to the same judges, powers to decide in cases in law and equity. Perhaps, the clause would have the same meaning were the words, "this constitution," omitted: there is in it either a careless complex misuse of words, in themselves of extensive signification, or there is some meaning not easy to be comprehended. Suppose a case arising under the constitution—suppose the question judicially moved, whether, by the constitution, congress can suppress a state tax laid on polls, lands, or as an excise duty, which may be supposed to interfere with a federal tax. By the letter of the constitution, congress will appear to have no power to do it: but then the judges may decide the question on principles of equity as well as law. Now, omitting the words, "in law and equity," they may decide according to the spirit and true meaning of the constitution, as collected from what must appear to have been the intentions of the people when they made it. Therefore, it would seem, that if these words mean any thing, they must have a further meaning: yet I will not suppose it intended to lodge an arbitrary power or discretion in the judges, to decide as their conscience, their opin-

ions, their caprice, or their politics might dictate. Without dwelling on this obscure clause, I will leave it to the examination of others.

The Federal Farmer.

XVI

January 20, 1788.

Dear Sir,

Having gone through with the organization of the government, I shall now proceed to examine more particularly those clauses which respect its powers. I shall begin with those articles and stipulations which are necessary for accurately ascertaining the extent of powers, and what is given, and for guarding, limiting, and restraining them in their exercise.[115] We often find, these articles and stipulations placed in bills of rights; but they may as well be incorporated in the body of the constitution, as selected and placed by themselves. The constitution, or whole social compact, is but one instrument, no more or less, than a certain number of articles or stipulations agreed to by the people, whether it consists of articles, sections, chapters, bills of rights, or parts of any other denomination, cannot be material. Many needless observations, and idle distinctions, in my opinion, have been made respecting a bill of rights. On the one hand, it seems to be considered as a necessary distinct limb of the constitution, and as containing a certain number of very valuable articles, which are applicable to all societies: and, on the other, as useless, especially in a federal government, possessing only enumerated power—nay, dangerous, as individual rights are numerous, and not easy to be enumerated in a bill of rights, and from articles, or stipulations, securing some of them, it may be inferred, that others not mentioned are surrendered.[116] There appears to me to be general indefinite propositions without much meaning—and the man who first advanced those of the latter description, in the present case, signed the federal constitution, which directly contradicts him.[117] The supreme power is undoubtedly in the people, and it is a principle well established in my mind, that they reserve all powers not expressly delegated by them to those who govern; this is as true in forming a state as in forming a federal government. There is no possible distinction but this founded merely in the different modes of proceeding which take place in some cases. In forming a state constitution, under which to manage not only the great but the little concerns of a community: the powers to be possessed by the government are often too numerous to be enumerated; the people to adopt the shortest way often give general powers, indeed all powers, to the government, in some general words, and then, by a

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particular enumeration, take back, or rather say they however reserve certain rights as sacred, and which no laws shall be made to violate: hence the idea that all powers are given which are not reserved: but in forming a federal constitution, which *ex vi termine*, supposes state governments existing, and which is only to manage a few great national concerns, we often find it easier to enumerate particularly the powers to be delegated to the federal head, than to enumerate particularly the individual rights to be reserved; and the principle will operate in its full force, when we carefully adhere to it. When we particularly enumerate the powers given, we ought either carefully to enumerate the rights reserved, or be totally silent about them; we must either particularly enumerate both, or else suppose the particular enumeration of the powers given adequately draws the line between them and the rights reserved, particularly to enumerate the former and not the latter, I think most advisable: however, as men appear generally to have their doubts about these silent reservations, we might advantageously enumerate the powers given, and then in general words, according to the mode adopted in the 2d art. of the confederation, declare all powers, rights and privileges, are reserved, which are not explicitly and expressly given up. People, and very wisely too, like to be express and explicit about their essential rights, and not to be forced to claim them on the precarious and unascertained tenure of inferences and general principles, knowing that in any controversy between them and their rulers, concerning those rights, disputes may be endless, and nothing certain:—But admitting, on the general principle, that all rights are reserved of course, which are not expressly surrendered, the people could with sufficient certainty assert their rights on all occasions, and establish them with ease, still there are infinite advantages in particularly enumerating many of the most essential rights reserved in all cases; and as to the less important ones, we may declare in general terms, that all not expressly surrendered are reserved. We do not by declarations change the nature of things, or create new truths, but we give existence, or at least establish in the minds of the people truths and principles which they might never otherwise have thought of, or soon forgot. If a nation means its systems, religious or political, shall have duration, it ought to recognize the leading principles of them in the front page of every family book. What is the usefulness of a truth in theory, unless it exists constantly in the minds of the people, and has their assent:—we discern certain rights, as the freedom of the press, and the trial by jury, &c. which the people of England and of America of course believe to be sacred, and essential to their political happiness, and this belief in them is the result of ideas at first suggested to them by a few able men, and of subsequent experience; while the people of some other countries hear these rights mentioned with the utmost indifference; they think the privilege of existing at the will of a despot much preferable to them. Why this difference amongst beings every way formed alike. The reason of the difference is obvious—it is the effect of education, a series of

notions impressed upon the minds of the people by examples, precepts and declarations. When the people of England got together, at the time they formed Magna Charta, they did not consider it sufficient, that they were indisputably entitled to certain natural and unalienable rights, not depending on silent titles, they, by a declaratory act, expressly recognized them, and explicitly declared to all the world, that they were entitled to enjoy those rights; they made an instrument in writing, and enumerated those they then thought essential, or in danger, and this wise men saw was not sufficient: and therefore, that the people might not forget these rights, and gradually become prepared for arbitrary government, their discerning and honest leaders caused this instrument to be confirmed near forty times, and to be read twice a year in public places, not that it would lose its validity without such confirmations, but to fix the contents of it in the minds of the people, as they successively come upon the stage.—Men, in some countries do not remain free, merely because they are entitled to natural and unalienable rights; men in all countries are entitled to them, not because their ancestors once got together and enumerated them on paper, but because, by repeated negociations and declarations, all parties are brought to realize them, and of course to believe them to be sacred. Were it necessary, I might shew the wisdom of our past conduct, as a people in not merely comforting ourselves that we were entitled to freedom, but in constantly keeping in view, in addresses, bills of rights, in news-papers, &c. the particular principles on which our freedom must always depend.[118]

It is not merely in this point of view, that I urge the engrafting in the constitution additional declaratory articles. The distinction, in itself just, that all powers not given are reserved, is in effect destroyed by this very constitution, as I shall particularly demonstrate—and even independent of this, the people, by adopting the constitution, give many general undefined powers to congress, in the constitutional exercise of which, the rights in question may be effected. Gentlemen who oppose a federal bill of rights, or further declaratory articles, seem to view the subject in a very narrow imperfect manner. These have for their objects, not only the enumeration of the rights reserved, but principally to explain the general powers delegated in certain material points, and to restrain those who exercise them by fixed known boundaries. Many explanations and restrictions necessary and useful, would be much less so, were the people at large all well and fully acquainted with the principles and affairs of government. There appears to be in the constitution, a studied brevity, and it may also be probable, that several explanatory articles were omitted from a circumstance very common. What we have long and early understood ourselves in the common concerns of the community, we are apt to suppose is understood by others, and need not be expressed; and it is not unnatural or uncommon for the ablest men most frequently to make this mistake. To make declaratory articles unnecessary in an instrument of government, two circumstances 2.8.197

must exist; the rights reserved must be indisputably so, and in their nature defined; the powers delegated to the government, must be precisely defined by the words that convey them, and clearly be of such extent and nature as that, by no reasonable construction, they can be made to invade the rights and prerogatives intended to be left in the people.

2.8.198 The first point urged, is, that all power is reserved not expressly given, that particular enumerated powers only are given, that all others are not given, but reserved, and that it is needless to attempt to restrian congress in the exercise of powers they possess not. This reasoning is logical, but of very little importance in the common affairs of men; but the constitution does not appear to respect it even in any view. To prove this, I might cite several clauses in it. I shall only remark on two or three. By article 1, section 9, "No title of nobility shall be granted by congress" Was this clause omitted, what power would congress have to make titles of nobility? in what part of the constitution would they find it? The answer must be, that congress would have no such power—that the people, by adopting the constitution, will not part with it. Why then by a negative clause, restrain congress from doing what it would have no power to do? This clause, then, must have no meaning, or imply, that were it omitted, congress would have the power in question, either upon the principle that some general words in the constitution may be so construed as to give it, or on the principle that congress possess the powers not expressly reserved. But this clause was in the confederation, and is said to be introduced into the constitution from very great caution. Even a cautionary provision implies a doubt, at least, that it is necessary; and if so in this case, clearly it is also alike necessary in all similar ones. The fact appears to be, that the people in forming the confederation, and the convention, in this instance, acted, naturally, they did not leave the point to be settled by general principles and logical inferences; but they settle the point in a few words, and all who read them at once understand them.

2.8.199 The trial by jury in criminal as well as in civil causes, has long been considered as one of our fundamental rights, and has been repeatedly recognized and confirmed by most of the state conventions.[119] But the constitution expressly establishes this trial in criminal, and wholly omits it in civil causes. The jury trial in criminal causes, and the benefit of the writ of habeas corpus, are already as effectually established as any of the fundamental or essential rights of the people in the United States. This being the case, why in adopting a federal constitution do we now establish these, and omit all others, or all others, at least with a few exceptions, such as again agreeing there shall be no ex post facto laws, no titles of nobility, &c. We must consider this constitution, when adopted, as the supreme act of the people, and in construing it hereafter, we and our posterity must strictly adhere to the letter and spirit of it, and in no instance depart from them: in construing the federal constitution, it will be not only impracticable, but

improper to refer to the state constitutions. They are entirely distinct instruments and inferior acts: besides, by the people's now establishing certain fundamental rights, it is strongly implied, that they are of opinion, that they would not otherwise be secured as a part of the federal system, or be regarded in the federal administration as fundamental. Further, these same rights, being established by the state constitutions, and secured to the people, our recognizing them now, implies, that the people thought them insecure by the state establishments, and extinguished or put afloat by the new arrangement of the social system, unless re-established.—Further, the people, thus establishing some few rights, and remaining totally silent about others similarly circumstanced, the implication indubitably is, that they mean to relinquish the latter, or at least feel indifferent about them. Rights, therefore, inferred from general principles of reason, being precarious and hardly ascertainable in the common affairs of society, and the people, in forming a federal constitution, explicitly shewing they conceive these rights to be thus circumstanced, and accordingly proceed to enumerate and establish some of them, the conclusion will be, that they have established all which they esteem valuable and sacred. On every principle, then, the people especially having began, ought to go through enumerating, and establish particularly all the rights of individuals, which can by any possibility come in question in making and executing federal laws. I have already observed upon the excellency and importance of the jury trial in civil as well as in criminal causes, instead of establishing it in criminal causes only; we ought to establish it generally;—instead of the clause of forty or fifty words relative to this subject, why not use the language that has always been used in this country, and say, "the people of the United States shall always be entitled to the trial by jury." This would shew the people still hold the right sacred, and enjoin it upon congress substantially to preserve the jury trial in all cases, according to the usage and custom of the country. I have observed before, that it is *the jury trial* we want; the little different appendages and modifications tacked to it in the different states, are no more than a drop in the ocean: the jury trial is a solid uniform feature in a free government; it is the substance we would save, not the little articles of form.

Security against expost facto laws, the trial by jury, and the benefits of the writ of habeas corpus, are but a part of those inestimable rights the people of the United States are entitled to, even in judicial proceedings, by the course of the common law. These may be secured in general words, as in New-York, the Western Territory, &c. by declaring the people of the United States shall always be entitled to judicial proceedings according to the course of the common law, as used and established in the said states. Perhaps it would be better to enumerate the particular essential rights the people are entitled to in these proceedings, as has been done in many of the states, and as has been done in England. In this case, the people may proceed to declare, that no man shall be held to answer to any offence, till 2.8.200

the same be fully described to him; nor to furnish evidence against himself: that, except in the government of the army and navy, no person shall be tried for any offence, whereby he may incur loss of life, or an infamous punishment, until he be first indicted by a grand jury: that every person shall have a right to produce all proofs that may be favourable to him, and to meet the witnesses against him face to face: that every person shall be entitled to obtain right and justice freely and without delay; that all persons shall have a right to be secure from all unreasonable searches and seizures of their persons, houses, papers, or possessions; and that all warrants shall be deemed contrary to this right, if the foundation of them be not previously supported by oath, and there be not in them a special designation of persons or objects of search, arrest, or seizure: and that no person shall be exiled or molested in his person or effects, otherwise than by the judgment of his peers, or according to the law of the land. A celebrated writer observes upon this last article, that in itself it may be said to comprehend the whole end of political society.[120] These rights are not necessarily reserved, they are established, or enjoyed but in few countries: they are stipulated rights, almost peculiar to British and American laws. In the execution of those laws, individuals, by long custom, by magna charta, bills of rights &c. have become entitled to them. A man, at first, by act of parliament, became entitled to the benefits of the writ of habeas corpus—men are entitled to these rights and benefits in the judicial proceedings of our state courts generally: but it will by no means follow, that they will be entitled to them in the federal courts, and have a right to assert them, unless secured and established by the constitution or federal laws. We certainly, in federal processes, might as well claim the benefits of the writ of habeas corpus, as to claim trial by a jury—the right to have council—to have witnesses face to face—to be secure against unreasonable search warrants, &c. was the constitution silent as to the whole of them:—but the establishment of the former, will evince that we could not claim them without it; and the omission of the latter, implies they are relinquished, or deemed of no importance. These are rights and benefits individuals acquire by compact; they must claim them under compacts, or immemorial usage—it is doubtful, at least, whether they can be claimed under immemorial usage in this country; and it is, therefore, we generally claim them under compacts, as charters and constitutions.

2.8.201 The people by adopting the federal constitution, give congress general powers to institute a distinct and new judiciary, new courts, and to regulate all proceedings in them, under the eight limitations mentioned in a former letter; and the further one, that the benefits of the habeas corpus act shall be enjoyed by individuals. Thus general powers being given to institute courts, and regulate their proceedings, with no provision for securing the rights principally in question, may not congress so exercise those powers, and constitutionally too, as to destroy those rights? clearly, in my opinion, they

are not in any degree secured. But, admitting the case is only doubtful, would it not be prudent and wise to secure them and remove all doubts, since all agree the people ought to enjoy these valuable rights, a very few men excepted, who seem to be rather of opinion that there is little or nothing in them? Were it necessary I might add many observations to shew their value and political importance.

2.8.202 The constitution will give congress general powers to raise and support armies. General powers carry with them incidental ones, and the means necessary to the end. In the exercise of these powers, is there any provision in the constitution to prevent the quartering of soldiers on the inhabitants? you will answer, there is not. This may sometimes be deemed a necessary measure in the support of armies; on what principle can the people claim the right to be exempt from this burden? they will urge, perhaps, the practice of the country, and the provisions made in some of the state constitutions—they will be answered, that their claim thus to be exempt is not founded in nature, but only in custom and opinion, or at best, in stipulations in some of the state constitutions, which are local, and inferior in their operation, and can have no controul over the general government—that they had adopted a federal constitution—had noticed several rights, but had been totally silent about this exemption—that they had given general powers relative to the subject, which, in their operation, regularly destroyed the claim. Though it is not to be presumed, that we are in any immediate danger from this quarter, yet it is fit and proper to establish, beyond dispute, those rights which are particularly valuable to individuals, and essential to the permanency and duration of free government. An excellent writer observes, that the English, always in possession of their freedom, are frequently unmindful of the value of it:[121] we, at this period, do not seem to be so well off, having, in some instances abused ours; many of us are quite disposed to barter it away for what we call energy, coercion, and some other terms we use as vaguely as that of liberty—There is often as great a rage for change and novelty in politics, as in amusements and fashions.

2.8.203 All parties apparently agree, that the freedom of the press is a fundamental right, and ought not to be restrained by any taxes, duties, or in any manner whatever. Why should not the people, in adopting a federal constitution, declare this, even if there are only doubts about it. But, say the advocates, all powers not given are reserved:—true; but the great question is, are not powers given, in the excercise of which this right may be destroyed? The people's or the printers claim to a free press, is founded on the fundamental laws, that is, compacts, and state constitutions, made by the people. The people, who can annihilate or alter those constitutions, can annihilate or limit this right. This may be done by giving general powers, as well as by using particular words. No right claimed under a state constitution, will avail against a law of the union, made in pursuance of the federal constitution: therefore the question is, what laws will congress have a right

to make by the constitution of the union, and particularly touching the press? By art. 1. sect. 8. congress will have power to lay and collect taxes, duties, imposts and excise. By this congress will clearly have power to lay and collect all kind of taxes whatever—taxes on houses, lands, polls, industry, merchandize, &c.—taxes on deeds, bonds, and all written instruments—on writs, pleas, and all judicial proceedings, on licences, naval officers papers, &c. on newspapers, advertisements, &c. and to require bonds of the naval officers, clerks, printers, &c. to account for the taxes that may become due on papers that go through their hands. Printing, like all other business, must cease when taxed beyond its profits; and it appears to me, that a power to tax the press at discretion, is a power to destroy or restrain the freedom of it. There may be other powers given, in the exercise of which this freedom may be effected; and certainly it is of too much importance to be left thus liable to be taxed, and constantly to constructions and inferences. A free press is the channel of communication as to mercantile and public affairs; by means of it the people in large countries ascertain each others sentiments; are enabled to unite, and become formidable to those rulers who adopt improper measures. Newspapers may sometimes be the vehicles of abuse, and of many things not true; but these are but small inconveniencies, in my mind, among many advantages. A celebrated writer, I have several times quoted, speaking in high terms of the English liberties, says, "lastly the key stone was put to the arch, by the final establishment of the freedom of the press."[122] I shall not dwell longer upon the fundamental rights, to some of which I have attended in this letter, for the same reasons that these I have mentioned, ought to be expressly secured, lest in the exercise of general powers given they may be invaded: it is pretty clear, that some other of less importance, or less in danger, might with propriety also be secured.

I shall now proceed to examine briefly the powers proposed to be vested in the several branches of the government, and especially the mode of laying and collecting internal taxes.

The Federal Farmer.

XVII

January 23, 1788.

Dear Sir,

2.8.204 I believe the people of the United States are full in the opinion, that a free and mild government can be preserved in their extensive territories, only under the substantial forms of a federal republic. As several of the ablest advocates for the system proposed, have acknowledged this (and I hope the

confessions they have published will be preserved and remembered) I shall not take up time to establish this point.[123] A question then arises, how far that system partakes of a federal republic.—I observed in a former letter, that it appears to be the first important step to a consolidation of the states; that its strong tendency is to that point.[124]

But what do we mean by a federal republic? and what by a consolidated government? To erect a federal republic, we must first make a number of states on republican principles; each state with a government organized for the internal management of its affairs: The states, as such, must unite under a federal head, and delegate to it powers to make and execute laws in certain enumerated cases, under certain restrictions; this head may be a single assembly, like the present congress, or the Amphictionic council; or it may consist of a legislature, with one or more branches; of an executive, and of a judiciary. To form a consolidated, or one entire government, there must be no state, or local governments, but all things, persons and property, must be subject to the laws of one legislature alone; to one executive, and one judiciary. Each state government, as the government of New Jersey, &c. is a consolidated, or one entire government, as it respects the counties, towns, citizens and property within the limits of the state.—The state governments are the basis, the pillar on which the federal head is placed, and the whole together, when formed on elective principles, constitute a federal republic. A federal republic in itself supposes state or local governments to exist, as the body or props, on which the federal head rests, and that it cannot remain a moment after they cease. In erecting the federal government, and always in its councils, each state must be known as a sovereign body; but in erecting this government, I conceive, the legislature of the state, by the expressed or implied assent of the people, or the people of the state, under the direction of the government of it, may accede to the federal compact: Nor do I conceive it to be necessarily a part of a confederacy of states, that each have an equal voice in the general councils. A confederated republic being organized, each state must retain powers for managing its internal police, and all delegate to the union power to manage general concerns: The quantity of power the union must possess is one thing, the mode of exercising the powers given, is quite a different consideration; and it is the mode of exercising them, that makes one of the essential distinctions between one entire or consolidated government, and a federal republic; that is, however the government may be organized, if the laws of the union, in most important concerns, as in levying and collecting taxes, raising troops, &c. operate immediately upon the persons and property of individuals, and not on states, extend to organizing the militia, &c. the government, as to its administration, as to making and executing laws, is not federal, but consolidated. To illustrate my idea—the union makes a requisition, and assigns to each state its quota of men or monies wanted; each state, by its own laws and officers, in its own way, furnishes its quota: here the state governments

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stand between the union and individuals; the laws of the union operate only on states, as such, and federally: Here nothing can be done without the meetings of the state legislatures—but in the other case the union, though the state legislatures should not meet for years together, proceeds immediately, by its own laws and officers, to levy and collect monies of individuals, to inlist men, form armies, &c. [H]ere the laws of the union operate immediately on the body of the people, on persons and property; in the same manner the laws of one entire consolidated government operate.—These two modes are very distinct, and in their operation and consequences have directly opposite tendencies: The first makes the existence of the state governments indispensable, and throws all the detail business of levying and collecting the taxes, &c. into the hands of those governments, and into the hands, of course, of many thousand officers solely created by, and dependent on the state. The last entirely excludes the agency of the respective states, and throws the whole business of levying and collecting taxes, &c. into the hands of many thousand officers solely created by, and dependent upon the union, and makes the existence of the state government of no consequence in the case. It is true, congress in raising any given sum in direct taxes, must by the constitution, raise so much of it in one state, and so much in another, by a fixed rule, which most of the states some time since agreed to: But this does not effect the principle in question, it only secures each state against any arbitrary proportions. The federal mode is perfectly safe and eligible, founded in the true spirit of a confederated republic; there could be no possible exception to it, did we not find by experience, that the states will sometimes neglect to comply with the reasonable requisitions of the union. It being according to the fundamental principles of federal republics, to raise men and monies by requisitions, and for the states individually to organize and train the militia, I conceive, there can be no reason whatever for departing from them, except this, that the states sometimes neglect to comply with reasonable requisitions, and that it is dangerous to attempt to compel a delinquent state by force, as it may often produce a war. We ought, therefore, to enquire attentively, how extensive the evils to be guarded against are, and cautiously limit the remedies to the extent of the evils. I am not about to defend the confederation, or to charge the proposed constitution with imperfections not in it; but we ought to examine facts, and strip them of the false colourings often given them by incautious observations, by unthinking or designing men. We ought to premise, that laws for raising men and monies, even in consolidated governments, are not often punctually complied with. Historians, except in extraordinary cases, but very seldom take notice of the detail collection of taxes; but these facts we have fully proved, and well attested; that the most energetic governments have relinquished taxes frequently, which were of many years standing. These facts amply prove, that taxes assessed, have remained many years uncollected. I agree there have been instances in the republics of Greece,

Holland &c. in the course of several centuries, of states neglecting to pay their quotas of requisitions; but it is a circumstance certainly deserving of attention, whether these nations which have depended on requisitions principally for their defence, have not raised men and monies nearly as punctually as entire governments, which have taxed directly; whether we have not found the latter as often distressed for the want of troops and monies as the former. It has been said that the Amphictionic council, and the Germanic head, have not possessed sufficient powers to controul the members of the republic in a proper manner. Is this, if true, to be imputed to requisitions? Is it not principally to be imputed to the unequal powers of those members, connected with this important circumstance, that each member possessed power to league itself with foreign powers, and powerful neighbours, without the consent of the head. After all, has not the Germanic body a government as good as its neighbours in general? and did not the Grecian republic remain united several centuries, and form the theatre of human greatness? No government in Europe has commanded monies more plentifully than the government of Holland. As to the United States, the separate states lay taxes directly, and the union calls for taxes by way of requisitions; and is it a fact, that more monies are due in proportion on requisitions in the United States, than on the state taxes directly laid?—It is but about ten years since congress begun to make requisitions, and in that time, the monies, &c. required, and the bounties given for men required of the states, have amounted, specie value, to about 36 millions dollars, about 24 millions of dollars of which have been actually paid; and a very considerable part of the 12 millions not paid, remains so not so much from the neglect of the states, as from the sudden changes in paper money, &c. which in a great measure rendered payments of no service, and which often induced the union indirectly to relinquish one demand, by making another in a different form. Before we totally condemn requisitions, we ought to consider what immense bounties the states gave, and what prodigious exertions they made in the war, in order to comply with the requisitions of congress; and if since the peace they have been delinquent, ought we not carefully to enquire, whether that delinquency is to be imputed solely to the nature of requisitions? ought it not in part to be imputed to two other causes? I mean first, an opinion, that has extensively prevailed, that the requisitions for domestic interest have not been founded on just principles; and secondly, the circumstance, that the government itself, by proposing imposts, &c. has departed virtually from the constitutional system; which proposed changes, like all changes proposed in government, produce an inattention and negligence in the execution of the government in being.

I am not for depending wholly on requisitions; but I mention these few facts to shew they are not so totally futile as many pretend. For the truth of many of these facts I appeal to the public records; and for the truth of the others, I appeal to many republican characters, who are best informed in the 2.8.206

affairs of the United States. Since the peace, and till the convention reported, the wisest men in the United States generally supposed, that certain limited funds would answer the purposes of the union: and though the states are by no means in so good a condition as I wish they were, yet, I think, I may very safely affirm, they are in a better condition than they would be had congress always possessed the powers of taxation now contended for. The fact is admitted, that our federal government does not possess sufficient powers to give life and vigor to the political system; and that we experience disappointments, and several inconveniencies; but we ought carefully to distinguish those which are merely the consequences of a severe and tedious war, from those which arise from defects in the federal system. There has been an entire revolution in the United States within thirteen years, and the least we can compute the waste of labour and property at, during that period, by the war, is three hundred million of dollars. Our people are like a man just recovering from a severe fit of sickness. It was the war that disturbed the course of commerce, introduced floods of paper money, the stagnation of credit, and threw many valuable men out of steady business. From these sources our greatest evils arise; men of knowledge and reflection must perceive it;—but then, have we not done more in three or four years past, in repairing the injuries of the war, by repairing houses and estates, restoring industry, frugality, the fisheries, manufactures, &c. and thereby laying the foundation of good government, and of indiviudal and political happiness, than any people ever did in a like time; we must judge from a view of the country and facts, and not from foreign newspapers, or our own, which are printed chiefly in the commercial towns, where imprudent living, imprudent importations, and many unexpected disappointments, have produced a despondency, and a disposition to view every thing on the dark side. Some of the evils we feel, all will agree, ought to be imputed to the defective administration of the governments. From these and various considerations, I am very clearly of opinion, that the evils we sustain, merely on account of the defects of the confederation, are but as a feather in the balance against a mountain, compared with those which would, infallibly, be the result of the loss of general liberty, and that happiness men enjoy under a frugal, free, and mild government.

2.8.207 Heretofore we do not seem to have seen danger any where, but in giving power to congress, and now no where but in congress wanting powers; and, without examining the extent of the evils to be remedied, by one step, we are for giving up to congress almost all powers of any importance without limitation. The defects of the confederation are extravagantly magnified, and every species of pain we feel imputed to them: and hence it is inferred, there must be a total change of the principles, as well as forms of government: and in the main point, touching the federal powers, we rest all on a logical inference, totally inconsistent with experience and sound political reasoning.[125]

It is said, that as the federal head must make peace and war, and provide for the common defence, it ought to possess all powers necessary to that end: that powers unlimited, as to the purse and sword, to raise men and monies, and form the militia, are necessary to that end; and, therefore, the federal head ought to possess them. This reasoning is far more specious than solid: it is necessary that these powers so exist in the body politic, as to be called into exercise whenever necessary for the public safety; but it is by no means true, that the man, or congress of men, whose duty it more immediately is to provide for the common defence, ought to possess them without limitation. But clear it is, that if such men, or congress, be not in a situation to hold them without danger to liberty, he or they ought not to possess them. It has long been thought to be a well founded position, that the purse and sword ought not to be placed in the same hands in a free government. Our wise ancestors have carefully separated them—placed the sword in the hands of their king, even under considerable limitations, and the purse in the hands of the commons alone: yet the king makes peace and war, and it is his duty to provide for the common defence of the nation. This authority at least goes thus far—that a nation, well versed in the science of government, does not conceive it to be necessary or expedient for the man entrusted with the common defence and general tranquility, to possess unlimitedly the powers in question, or even in any considerable degree. Could he, whose duty it is to defend the public, possess in himself independently, all the means of doing it consistent with the public good, it might be convenient: but the people of England know that their liberties and happiness would be in infinitely greater danger from the king's unlimited possession of these powers, than from all external enemies and internal commotions to which they might be exposed: therefore, though they have made it his duty to guard the empire, yet they have wisely placed in other hands, the hands of their representatives, the power to deal out and controul the means. In Holland their high mightinesses must provide for the common defence, but for the means they depend, in a considerable degree, upon requisitions made on the state or local assemblies. Reason and facts evince, that however convenient it might be for an executive magistrate, or federal head, more immediately charged with the national defence and safety, solely, directly, and independently to possess all the means; yet such magistrate, or head, never ought to possess them, if thereby the public liberties shall be endangered. The powers in question never have been, by nations wise and free, deposited, nor can they ever be, with safety, any where, but in the principal members of the national system;—where these form one entire government, as in Great-Britain, they are separated and lodged in the principal members of it. But in a federal republic, there is quite a different organization; the people form this kind of government, generally, because their territories are too extensive to admit of their assembling in one legislature, or of executing the laws on free principles under one entire govern- 2.8.208

ment. They convene in their local assemblies, for local purposes, and for managing their internal concerns, and unite their states under a federal head for general purposes. It is the essential characteristic of a confederated republic, that this head be dependant on, and kept within limited bounds by, the local governments; and it is because, in these alone, in fact, the people can be substantially assembled or represented. It is, therefore, we very universally see, in this kind of government, the congressional powers placed in a few hands, and accordingly limited, and specifically enumerated: and the local assemblies strong and well guarded, and composed of numerous members. Wise men will always place the controuling power where the people are substantially collected by their representatives. By the proposed system, the federal head will possess, without limitation, almost every species of power that can, in its exercise, tend to change the government, or to endanger liberty; while in it, I think it has been fully shewn, the people will have but the shadow of representation, and but the shadow of security for their rights and liberties. In a confederated republic, the division of representation, &c. in its nature, requires a correspondent division and deposit of powers relative to taxes and military concerns: and I think the plan offered stands quite alone, in confounding the principles of governments in themselves totally distinct. I wish not to exculpate the states for their improper neglects in not paying their quotas of requisitions; but, in applying the remedy, we must be governed by reason and facts. It will not be denied, that the people have a right to change the government when the majority chuse it, if not restrained by some existing compact—that they have a right to displace their rulers, and consequently to determine when their measures are reasonable or not—and that they have a right, at any time, to put a stop to those measures they may deem prejudicial to them, by such forms and negatives as they may see fit to provide. From all these, and many other well founded considerations, I need not mention, a question arises, what powers shall there be delegated to the federal head, to insure safety, as well as energy, in the government? I think there is a safe and proper medium pointed out by experience, by reason, and facts. When we have organized the government, we ought to give power to the union, so far only as experience and present circumstances shall direct, with a reasonable regard to time to come. Should future circumstances, contrary to our expectations, require that further powers be transferred to the union, we can do it far more easily, than get back those we may now imprudently give. The system proposed is untried: candid advocates and opposers admit, that it is, in a degree, a mere experiment, and that its organization is weak and imperfect: surely then, the safe ground is cautiously to vest power in it, and when we are sure we have given enough for ordinary exigencies, to be extremely careful how we delegate powers, which, in common cases, must necessarily be useless or abused, and of very uncertain effect in uncommon ones.

By giving the union power to regulate commerce, and to levy and collect taxes by imposts, we give it an extensive authority, and permanent productive funds, I believe quite as adequate to the present demands of the union, as exises and direct taxes can be made to the present demands of the separate states. The state governments are now about four times as expensive as that of the union; and their several state debts added together, are nearly as large as that of the union—Our impost duties since the peace have been almost as productive as the other sources of taxation, and when under one general system of regulations, the probability is, that those duties will be very considerably increased: Indeed the representation proposed will hardly justify giving to congress unlimited powers to raise taxes by imposts, in addition to the other powers the union must necessarily have. It is said, that if congress possess only authority to raise taxes by imposts, trade probably will be overburdened with taxes, and the taxes of the union be found inadequate to any uncommon exigencies: To this we may observe, that trade generally finds its own level, and will naturally and necessarily leave off any undue burdens laid upon it: further, if congress alone possess the impost, and also unlimited power to raise monies by excises and direct taxes, there must be much more danger that two taxing powers, the union and states, will carry excises and direct taxes to an unreasonable extent, especially as these have not the natural boundaries taxes on trade have. However, it is not my object to propose to exclude congress from raising monies by internal taxes, as by duties, excises, and direct taxes, but my opinion is, that congress, especially in its proposed organization, ought not to raise monies by internal taxes, except in strict conformity to the federal plan; that is, by the agency of the state governments in all cases, except where a state shall neglect, for an unreasonable time, to pay its quota of a requisition; and never where so many of the state legislatures as represent a majority of the people, shall formally determine an excise law or requisition is improper, in their next session after the same be laid before them. We ought always to recollect that the evil to be guarded against is found by our own experience, and the experience of others, to be mere neglect in the states to pay their quotas; and power in the union to levy and collect the neglecting states' quotas with interest, is fully adequate to the evil. By this federal plan, with this exception mentioned, we secure the means of collecting the taxes by the usual process of law, and avoid the evil of attempting to compel or coerce a state; and we avoid also a circumstance, which never yet could be, and I am fully confident never can be, admitted in a free federal republic; I mean a permanent and continued system of tax laws of the union, executed in the bowels of the states by many thousand officers, dependent as to the assessing and collecting federal taxes, solely upon the union. On every principle then, we ought to provide, that the union render an exact account of all monies raised by imposts and other taxes; and that whenever monies shall be wanted for the purposes of the union, beyond the

2.8.209

proceeds of the impost duties, requisitions shall be made on the states for the monies so wanted; and that the power of laying and collecting shall never be exercised, except in cases where a state shall neglect, a given time, to pay its quota. This mode seems to be strongly pointed out by the reason of the case, and spirit of the government; and I believe, there is no instance to be found in a federal republic, where the congressional powers ever extended generally to collecting monies by direct taxes or excises. Creating all these restrictions, still the powers of the union in matters of taxation, will be too unlimited; further checks, in my mind, are indispensably necessary. Nor do I conceive, that as full a representation as is practicable in the federal government, will afford sufficient security: the strength of the government, and the confidence of the people, must be collected principally in the local assemblies; every part or branch of the federal head must be feeble, and unsafely trusted with large powers. A government possessed of more power than its constituent parts will justify, will not only probably abuse it, but be unequal to bear its own burden; it may as soon be destroyed by the pressure of power, as languish and perish for want of it.

2.8.210 There are two ways further of raising checks, and guarding against undue combinations and influence in a federal system. The first is, in levying taxes, raising and keeping up armies, in building navies, in forming plans for the militia, and in appropriating monies for the support of the military, to require the attendance of a large proportion of the federal representatives, as two-thirds or three-fourths of them; and in passing laws, in these important cases, to require the consent of two-thirds or three-fourths of the members present. The second is, by requiring that certain important laws of the federal head, as a requisition or a law for raising monies by excise shall be laid before the state legislatures, and if disapproved of by a given number of them, say by as many of them as represent a majority of the people, the law shall have no effect. Whether it would be adviseable to adopt both, or either of these checks, I will not undertake to determine. We have seen them both exist in confederated republics. The first exists substantially in the confederation, and will exist in some measure in the plan proposed, as in chusing a president by the house, in expelling members; in the senate, in making treaties, and in deciding on impeachments, and in the whole in altering the constitution. The last exists in the United Netherlands, but in a much greater extent. The first is founded on this principle, that these important measures may, sometimes, be adopted by a bare quorum of members, perhaps, from a few states, and that a bare majority of the federal representatives may frequently be of the aristocracy, or some particular interests, connections, or parties in the community, and governed by motives, views, and inclinations not compatible with the general interest.—The last is founded on this principle, that the people will be substantially represented, only in their state or local assemblies; that their principal security must be found in them; and that, therefore, they ought to have ultimately a constitutional controul over such interesting measures.

I have often heard it observed, that our people are well informed, and will not submit to oppressive governments; that the state governments will be their ready advocates, and possess their confidence, mix with them, and enter into all their wants and feelings.[126] This is all true; but of what avail will these circumstances be, if the state governments, thus allowed to be the guardians of the people, possess no kind of power by the forms of the social compact, to stop in their passage, the laws of congress injurious to the people. State governments must stand and see the law take place; they may complain and petition—so may individuals; the members of them, in extreme cases, may resist, on the principles of self-defence—so may the people and individuals. 2.8.211

It has been observed, that the people, in extensive territories, have more power, compared with that of their rulers, than in small states.[127] Is not directly the opposite true? The people in a small state can unite and act in concert, and with vigour; but in large territories, the men who govern find it more easy to unite, while people cannot; while they cannot collect the opinions of each part, while they move to different points, and one part is often played off against the other. 2.8.212

It has been asserted, that the confederate head of a republic at best, is in general weak and dependent;—that the people will attach themselves to, and support their local governments, in all disputes with the union.[128] Admit the fact: is it any way to remove the inconvenience by accumulating powers upon a weak organization? The fact is, that the detail administration of affairs, in this mixed republics, depends principally on the local governments; and the people would be wretched without them: and a great proportion of social happiness depends on the internal administration of justice, and on internal police. The splendor of the monarch, and the power of the government are one thing. The happiness of the subject depends on very different causes: but it is to the latter, that the best men, the greatest ornaments of human nature, have most carefully attended: it is to the former tyrants and oppressors have always aimed, 2.8.213

The Federal Farmer.

XVIII

January 25, 1788.

Dear Sir,

I am persuaded, a federal head never was formed, that possessed half the powers which it could carry into full effect, altogether independently of the state or local governments, as the one, the convention has proposed, will possess. Should the state legislatures never meet, except merely for chusing federal senators and appointing electors, once in four and six years, the 2.8.214

federal head may go on for ages to make all laws relative to the following subjects, and by its own courts, officers, and provisions, carry them into full effect, and to any extent it may deem for the general welfare, that is, for *raising taxes*, borrowing and coining monies, and for applying them—for forming and governing *armies* and *navies* and for directing their operations—for regulating commerce with foreign nations, and among the several states, and with the Indian tribes—for regulating *bankruptcies*, weights and measures, post-offices and post-roads, and captures on land and water—for establishing a uniform rule of naturalization, and for promoting the progress of science and useful arts—for defining and punishing piracies and felonies committed on the high seas, the offences of counterfeiting the securities and current coin of the United States, and offences against the law of nations, and for regulating all maritime concerns—for *organizing, arming* and *disciplining* the militia (the respective states training them, and appointing the officers)—for *calling them forth* when wanted, and for governing them when in the service of the union—for the *sole and exclusive government* of a federal city or town, not exceeding ten miles square, and of places ceded for forts, magazines arsenals, dock-yards, and other needful buildings—for granting letters of marque and reprisal, and making war—for regulating the *times, places*, and *manner of holding elections* for senators and representatives—for making and concluding all treaties, and carrying them into execution—for judicially deciding all questions arising on the constitution laws, and treaties of the union, in law and equity, and questions arising on state laws also, where ambassadors, other public ministers, and consuls, where the United States, individual states, or a state, where *citizens of different states*, and where foreign states, or a *foreign subject*, are parties or party—for impeaching and trying federal officers—for deciding on elections, and for expelling members, &c. All these enumerated powers we must examine and contemplate in all their extent and various branches, and then reflect, that the federal head will have full power to make all laws whatever respecting them; and for carrying into full effect all powers vested in the union, in any department, or officers of it, by the constitution, in order to see the full extent of the federal powers, which will be supreme, and exercised by that head at pleasure, conforming to the few limitations mentioned in the constitution. Indeed, I conceive, it is impossible to see them in their full extent at present: we see vast undefined powers lodged in a weak organization, but cannot, by the enquiries of months and years, clearly discern them in all their numerous branches. These powers in feeble hands, must be tempting objects for ambition and a love of power and fame.

2.8.215 But, say the advocates, they are all necessary for forming an energetic federal government; all necessary in the hands of the union, for the common defence and general welfare. In these great points they appear to me to go from the end to the means, and from the means to the end, perpetually begging the question.[129] I think in the course of these letters, I shall

sufficiently prove, that some of these powers need not be lodged in the hands of the union—that others ought to be exercised under better checks, and in part, by the agency of the states—some I have already considered, some in my mind, are not liable to objections, and the others, I shall briefly notice in this closing letter.

The power to controul the military forces of the country, as well as the revenues of it, requires serious attention. Here again I must premise, that a federal republic is a compound system, made up of constituent parts, each essential to the whole: we must then expect the real friends of such a system will always be very anxious for the security and preservation of each part, and to this end, that each constitutionally possess its natural portion of power and influence—and that it will constantly be an object of concern to them, to see one part armed at all points by the constitution, and in manner destructive in the end, even of its own existence, and the others left constitutionally defenceless. 2.8.216

The military forces of a free country may be considered under three general descriptions—1. The militia. 2. the navy—and 3. the regular troops—and the whole ought ever to be, and understood to be, in strict subordination to the civil authority; and that regular troops, and select corps, ought not to be kept up without evident necessity. Stipulations in the constitution to this effect, are perhaps, too general to be of much service, except merely to impress on the minds of the people and soldiery, that the military ought ever to be subject to the civil authority, &c. But particular attention, and many more definite stipulations, are highly necessary to render the military safe, and yet useful in a free government; and in a federal republic, where the people meet in distinct assemblies, many stipulations are necessary to keep a part from transgressing, which would be unnecessary checks against the whole met in one legislature, in one entire government.—A militia, when properly formed, are in fact the people themselves, and render regular troops in a great measure unnecessary. The powers to form and arm the militia, to appoint their officers, and to command their services, are very important; nor ought they in a confederated republic to be lodged, solely, in any one member of the government. First, the constitution ought to secure a genuine and guard against a select militia, by providing that the militia shall always be kept well organized, armed, and disciplined, and include, according to the past and general usage of the states, all men capable of bearing arms; and that all regulations tending to render this general militia useless and defenceless, by establishing select corps of militia, or distinct bodies of military men, not having permanent interests and attachments in the community to be avoided. I am persuaded, I need not multiply words to convince you of the value and solidity of this principle, as it respects general liberty, and the duration of a free and mild government: having this principle well fixed by the constitution, then the federal head may prescribe a general uniform plan, on which the respective 2.8.217

states shall form and train the militia, appoint their officers and solely manage them, except when called into the service of the union, and when called into that service, they may be commanded and governed by the union. This arrangement combines energy and safety in it; it places the sword in the hands of the solid interest of the community, and not in the hands of men destitute of property, of principle, or of attachment to the society and government, who often form the select corps of peace or ordinary establishments: by it, the militia are the people, immediately under the management of the state governments, but on a uniform federal plan, and called into the service, command, and government of the union, when necessary for the common defence and general tranquility. But, say gentlemen, the general militia are for the most part employed at home in their private concerns, cannot well be called out, or be depended upon; that we must have a select militia; that is, as I understand it, particular corps or bodies of young men, and of men who have but little to do at home, particularly armed and disciplined in some measure, at the public expence, and always ready to take the field. These corps, not much unlike regular troops, will ever produce an inattention to the general militia; and the consequence has ever been, and always must be, that the substantial men, having families and property, will generally be without arms, without knowing the use of them, and defenceless; whereas, to preserve liberty, it is essential that the whole body of the people always possess arms, and be taught alike, especially when young, how to use them; nor does it follow from this, that all promiscuously must go into actual service on every occasion. The mind that aims at a select militia, must be influenced by a truly anti-republican principle; and when we see many men disposed to practice upon it, whenever they can prevail, no wonder true republicans are for carefully guarding against it. As a farther check, it may be proper to add, that the militia of any state shall not remain in the service of the union, beyond a given period, without the express consent of the state legislature.

2.8.218 As to the navy, I do not see that it can have any connection with the local governments. The want of employment for it, and the want of monies in the hands of the union, must be its proper limitation. The laws for building or increasing it, as all the important laws mentioned in a former letter, touching military and money matters, may be checked by requiring the attendance of a large proportion of the representatives, and the consent of a large proportion of those present, to pass them as before mentioned.

2.8.219 By art. 1. sect. 8. "Congress shall have *power to provide for* organizing, arming, and discipling the militia": *power to provide for*—does this imply any more than power to prescribe a general uniform plan? And must not the respective states pass laws (but in conformity to the plan) for forming and training the militia.

2.8.220 In the present state of mankind, and of conducting war, the government of every nation must have power to raise and keep up regular troops: the

question is, how shall this power be lodged? In an entire government, as in Great-Britain, where the people assemble by their representatives in one legislature, there is no difficulty, it is of course properly lodged in that legislature: But in a confederated republic, where the organization consists of a federal head, and local governments, there is no one part in which it can be solely, and safely lodged. By art. 1. sect. 8. "congress shall have power to raise and support armies," &c. By art. 1 sect. 10. "no state, without the consent of congress, shall keep troops, or ships of war, in time of peace." It seems fit the union should direct the raising of troops, and the union may do it in two ways; by requisitions on the states, or by direct taxes—the first is most conformable to the federal plan, and safest; and it may be improved, by giving the union power, by its own laws and officers, to raise the states quota that may neglect, and to charge it with the expence; and by giving a fixed quorum of the state legislatures power to disapprove the requisition. There would be less danger in this power to raise troops, could the state governments keep a proper controul over the purse and over the militia; but after all the precautions we can take, without evidently fettering the union too much, we must give a large accumulation of powers to it, in these and other respects. There is one check, which, I think, may be added with great propriety—that is, no land forces shall be kept up, but by legislative acts annually passed by congress, and no appropriation of monies for their support shall be for a longer term than one year. This is the constitutional practice in Great-Britain, and the reasons for such checks in the United States appear to be much stronger. We may also require that these acts be passed by a special majority, as before mentioned. There is another mode still more guarded, and which seems to be founded in the true spirit of a federal system: it seems proper to divide those powers we can with safety, lodge them in no one member of the government alone; yet substantially to preserve their use, and to ensure duration to the government, by modifying the exercise of them—it is to empower congress to raise troops by direct levies, not exceeding a given number, say 2000 in time of peace, and 12,000 in a time of war, and for such further troops as may be wanted, to raise them by requisitions qualified as before mentioned. By the above recited clause no state shall keep troops, &c. in time of peace—this clearly implies, it may do it in time of war: this must be on the principle, that the union cannot defend all parts of the republic, and suggests an idea very repugnant to the general tendency of the system proposed, which is to disarm the state governments: a state in a long war may collect forces sufficient to take the field against the neighbouring states. This clause was copied from the confederation, in which it was of more importance than in the plan proposed, because under this the separate states, probably, will have but small revenues.

By article 1. section 8. congress shall have power to establish uniform laws on the subject of bankruptcies, throughout the United States. It is to be observed, that the separate states have ever been in possession of the 2.8.221

power, and in the use of it, of making bankrupt laws, militia laws, and laws in some other cases, respecting which, the new constitution, when adopted, will give the union power to legislate, &c.—but no words are used by the constitution to exclude the jurisdiction of the several states, and whether they will be excluded or not, or whether they and the union will have concurrent jurisdiction or not, must be determined by inference; and from the nature of the subject: if the power, for instance, to make uniform laws on the subject of bankruptcies, is in its nature indivisible, or incapable of being exercised by two legislatures independently, or by one in aid of the other, then the states are excluded, and cannot legislate at all on the subject, even though the union should neglect or find it impracticable to establish uniform bankrupt laws. How far the union will find it practicable to do this, time only can fully determine. When we consider the extent of the country, and the very different ideas of the different parts in it, respecting credit, and the mode of making men's property liable for paying their debts, we may, I think, with some degree of certainty, conclude that the union never will be able to establish such laws; but if practicable, it does not appear to me, on further reflection, that the union ought to have the power;[130] it does not appear to me to be a power properly incidental to a federal head, and, I believe, no one ever possessed it; it is a power that will immediately and extensively interfere with the internal police of the separate states, especially with their administering justice among their own citizens. By giving this power to the union, we greatly extend the jurisdiction of the federal judiciary, as all questions arising on bankrupt laws, being laws of the union, even between citizens of the same state, may be tried in the federal courts; and I think it may be shewn, that by the help of these laws, actions between citizens of different states, and the laws of the federal city, aided by no overstrained judicial fictions, almost all civil causes may be drawn into those courts. We must be sensible how cautious we ought to be in extending unnecessarily the jurisdiction of those courts, for reasons I need not repeat. This article of power too, will considerably increase, in the hands of the union, an accumulation of powers, some of a federal and some of a unfederal nature, too large without it.

2.8.222 The constitution provides, that congress shall have the sole and exclusive government of what is called the federal city, a place not exceeding ten miles square, and of all places ceded for forts, dock-yards, &c. I believe this is a novel kind of provision in a federal republic; it is repugnant to the spirit of such a government, and must be founded in an apprehension of a hostile disposition between the federal head and the state governments; and it is not improbable, that the sudden retreat of congress from Philadelphia, first gave rise to it.—With this apprehension, we provide, the government of the union shall have secluded places, cities, and castles of defence, which no state laws whatever shall invade. When we attentively examine this provision in all its consequences, it opens to view scenes almost without bounds. A

federal, or rather a national city, ten miles square, containing a hundred square miles, is about four times as large as London; and for forts, magazines, arsenals, dock-yards, and other needful buildings, congress may possess a number of places or towns in each state. It is true, congress cannot have them unless the state legislatures cede them; but when once ceded, they never can be recovered, and though the general temper of the legislatures may be averse to such cessions, yet many opportunities and advantages may be taken of particular times and circumstances of complying assemblies, and of particular parties, to obtain them. It is not improbable, that some considerable towns or places, in some intemperate moments, or influenced by anti-republican principles, will petition to be ceded for the purposes mentioned in the provision. There are men, and even towns, in the best republics, which are often fond of withdrawing from the government of them, whenever occasion shall present. The case is still stronger; if the provision in question holds out allurements to attempt to withdraw, the people of a state must ever be subject to state as well as federal taxes; but the federal city and places will be subject only to the latter, and to them by no fixed proportion, nor of the taxes raised in them, can the separate states demand any account of congress.—These doors opened for withdrawing from the state governments entirely, may, on other accounts, be very alluring and pleasing to those anti-republican men who prefer a place under the wings of courts.

If a federal town be necessary for the residence of congress and the public officers, it ought to be a small one, and the government of it fixed on republican and common law principles, carefully enumerated and established by the constitution. It is true, the states, when they shall cede places, may stipulate, that the laws and government of congress in them, shall always be formed on such principles; but it is easy to discern, that the stipulations of a state, or of the inhabitants of the place ceded, can be of but little avail against the power and gradual encroachments of the union. The principles ought to be established by the federal constitution, to which all the states are parties; but in no event can there be any need of so large a city and places for forts, &c. totally exempted from the laws and jurisdictions of the state governments. If I understand the constitution, the laws of congress, constitutionally made, will have complete and supreme jurisdiction to all federal purposes, on every inch of ground in the United States, and exclusive jurisdiction on the high seas, and this by the highest authority, the consent of the people. Suppose ten acres at West-Point shall be used as a fort of the union, or a sea port town as a dock-yard, the laws of the union in those places respecting the navy, forces of the union, and all federal objects, must prevail, be noticed by all judges and officers, and executed accordingly: and I can discern no one reason for excluding from these places, the operation of state laws, as to mere state purposes; for instance, for the collection of state taxes in them, recovering debts, deciding questions of

2.8.223

property arising within them on state laws, punishing, by state laws, theft, trespasses, and offences committed in them by mere citizens against the state laws.

2.8.224 The city, and all the places in which the union shall have this exclusive jurisdiction, will be immediately under one entire government, that of the federal head; and be no part of any state, and consequently no part of the United States. The inhabitants of the federal city and places, will be as much exempt from the laws and controul of the state governments, as the people of Canada or Nova Scotia will be. Neither the laws of the states respecting taxes, the militia, crimes or property, will extend to them; nor is there a single stipulation in the constitution, that the inhabitants of this city, and these places, shall be governed by laws founded on principles of freedom. All questions, civil and criminal, arising on the laws of these places, which must be the laws of congress, must be decided in the federal courts; and also, all questions that may, by such judicial fictions as these courts may consider reasonable, be supposed to arise within this city, or any of these places, may be brought into these courts; and by a very common legal fiction, any personal contract may be supposed to have been made in any place. A contract made in Georgia may be supposed to have been made in the federal city, in Pennsylvania; the courts will admit the fiction, and not in these cases, make it a serious question, where it was in fact made. Every suit in which an inhabitant of a federal district may be a party, of course may be instituted in the federal courts—also, every suit in which it may be alledged, and not denied, that a party in it is an inhabitant of such a district—also, every suit to which a foreign state or subject, the union, a state, citizens of different states, in fact, or by reasonable legal fictions, may be a party or parties: And thus, by means of bankrupt laws, federal districts, &c. almost all judicial business, I apprehend may be carried into the federal courts, without essentially departing from the usual course of judicial proceedings.[131] The courts in Great Britain have acquired their powers, and extended, very greatly, their jurisdictions by such fictions and suppositions as I have mentioned. The constitution, in these points, certainly involves in it principles, and almost hidden cases, which may unfold, and in time exhibit consequences we hardly think of. The power of naturalization, when viewed in connection with the judicial powers and cases, is, in my mind, of very doubtful extent. By the constitution itself, the citizens of each state will be naturalized citizens of every state, to the general purposes of instituting suits, claiming the benefits of the laws, &c. And in order to give the federal courts jurisdiction of an action, between citizens of the same state, in common acceptation, may not a court allow the plaintiff to say, he is a citizen of one state, and the defendant a citizen of another, without carrying legal fictions so far, by any means, as they have been carried by the courts of King's Bench and Exchequer, in order to bring causes within their cognizance—Further, the federal city and districts, will be totally distinct

from any state, and a citizen of a state will not of course be a subject of any of them; and to avail himself of the privileges and immunities of them, must he not be naturalized by congress in them? and may not congress make any proportion of the citizens of the states naturalized subjects of the federal city and districts, and thereby entitle them to sue or defend, in all cases, in the federal courts? I have my doubts, and many sensible men, I find, have their doubts, on these points; and we ought to observe, they must be settled in the courts of law, by their rules, distinctions, and fictions. To avoid many of these intricacies and difficulties, and to avoid the undue and unnecessary extension of the federal judicial powers, it appears to me, that no federal districts ought to be allowed, and no federal city or town, except perhaps a small town, in which the government shall be republican, but in which congress shall have no jurisdiction over the inhabitants, but in common with the other inhabitants of the states. Can the union want, in such a town, any thing more than a right to the soil on which it may set its buildings, and extensive jurisdiction over the federal buildings, and property, its own members, officers, and servants in it? As to all federal objects, the union will have complete jurisdiction over them, of course any where, and every where. I still think, that no actions ought to be allowed to be brought in the federal courts, between citizens of different states, at least, unless the cause be of very considerable importance: that no action against a state government, by any citizen or foreigner, ought to be allowed; and no action, in which a foreign subject is party, at least, unless it be of very considerable importance, ought to be instituted in the federal courts—I confess, I can see no reason whatever, for a foreigner, or for citizens of different states, carrying sixpenny causes into the federal courts; I think the state courts will be found by experience, to be bottomed on better principles, and to administer justice better than the federal courts.

The difficulties and dangers I have supposed, will result from so large a federal city, and federal districts, from the extension of the federal judicial powers, &c. are not, I conceive, merely possible, but probable. I think, pernicious political consequences will follow from them, and from the federal city especially, for very obvious reasons, a few of which I will mention. 2.8.225

We must observe, that the citizens of a state will be subject to state as well as federal taxes, and the inhabitants of the federal city and districts, only to such taxes as congress may lay—We are not to suppose all our people are attached to free government, and the principles of the common law, but that many thousands of them will prefer a city governed, not on republican principles—This city, and the government of it, must indubitably take their tone from the characters of the men, who from the nature of its situation and institution, must collect there. This city will not be established for productive labour, for mercantile, or mechanic industry; but for the residence of government, its officers and attendants. If hereafter it should ever become a place of trade and industry, in the early periods of its exis- 2.8.226

tence, when its laws and government must receive their fixed tone, it must be a mere court, with its appendages, the executive, congress, the law courts, gentlemen of fortune and pleasure, with all the officers, attendants, suitors, expectants and dependants on the whole, however brilliant and honourable this collection may be, if we expect it will have any sincere attachments to simple and frugal republicanism, to that liberty and mild government, which is dear to the laborious part of a free people, we most assuredly deceive ourselves. This early collection will draw to it men from all parts of the country, of a like political description: we see them looking towards the place already.

2.8.227 Such a city, or town, containing a hundred square miles, must soon be the great, the visible, and dazzling centre, the mistress of fashions, and the fountain of politics. There may be a free or shackled press in this city, and the streams which may issue from it may overflow the country, and they will be poisonous or pure, as the fountain may be corrupt or not. But not to dwell on a subject that must give pain to the virtuous friends of freedom, I will only add, can a free and enlightened people create a common head so extensive, so prone to corruption and slavery, as this city probably will be, when they have it in their power to form one pure and chaste, frugal and republican.

2.8.228 Under the confederation congress has no power whereby to govern its own officers and servant[s]; a federal town, in which congress might have special jurisdiction, might be expedient: but under the new constitution, without a federal town, congress will have all necessary powers of course over its officers and servants: indeed it will have a complete system of powers to all the federal purposes mentioned in the constitution: so that the reason for a federal town under the confederation, will by no means exist under the constitution.—Even if a trial by jury should be admitted in the federal city, what man, with any state attachments or republican virtue about him, will submit to be tried by a jury of it.

2.8.229 I might observe more particularly upon several other parts of the constitution proposed: but it has been uniformly my object in examining a subject so extensive, and difficult in many parts to be illustrated, to avoid unimportant things, and not to dwell upon points not very material. The rule for apportioning requisitions on the states, having some time since been agreed to by eleven states, I have viewed as settled. The stipulation that congress, after twenty one years may prohibit the importation of slaves, is a point gained, if not so favourable as could be wished for. As monopolies in trade perhaps, can in no case be useful, it might not be amiss to provide expressly against them. I wish the power to reprieve and pardon was more cautiously lodged, and under some limitations. I do not see why congress should be allowed to consent that a person may accept a present, office, or title of a foreign prince, &c. As the state governments, as well as the federal, are essential parts of the system, why should not the oath taken by the officers be expressly to support the whole? As to debts due to and from the

union, I think the constitution intends, on examining art. 4. sect. 8. and art. 6. that they shall stand on the same ground under the constitution as under the confederation. In the article respecting amendments, it is stipulated, that no state shall ever be deprived of its equal vote in the senate without its consent; and that alterations may be made by the consent of three-fourths of the states. Stipulations to bind the majority of the people may serve one purpose, to prevent frequent motions for change; but these attempts to bind the majority, generally give occasion for breach of contract. The states all agreed about seven years ago, that the confederation should remain unaltered, unless every state should agree to alterations: but we now see it agreed by the convention, and four states, that the old confederacy shall be destroyed, and a new one, of nine states, be erected, if nine only shall come in. Had we agreed, that a majority should alter the confederation, a majority's agreeing would have bound the rest: but now we must break the old league, unless all the states agree to alter, or not proceed with adopting the constitution. Whether the adoption by nine states will not produce a nearly equal and dangerous division of the people for and against the constitution—whether the circumstances of the country were such as to justify the hazarding a probability of such a situation, I shall not undertake to determine. I shall leave it to be determined hereafter, whether nine states, under a new federal compact, can claim the benefits of any treaties made with a confederation of thirteen, under a distinct compact and form of existence—whether the new confederacy can recover debts due to the old confederacy, or the arrears of taxes due from the states excluded.

It has been well observed, that our country is extensive, and has no external enemies to press the parts together: that, therefore, their union must depend on strong internal ties.[132] I differ with the gentlemen who make these observations only in this, they hold the ties ought to be strengthened by a considerable degree of internal consolidation, and my object is to form them and strengthen them, on pure federal principles. Whatever may be the fate of many valuable and necessary amendments in the constitution proposed, the ample discussion and respectable opposition it will receive, will have a good effect—they will operate to produce a mild and prudent administration, and to put the wheels of the whole system in motion on proper principles—they will evince, that true republican principles and attachments are still alive and formidable in this country. These, in view, I believe, even men quite disposed to make a bad use of the system, will long hesitate before they will resolve to do it. A majority, from a view of our situation, and influenced by many considerations, may acquiese in the adoption of this constitution; but, it is evident that a very great majority of the people of the United States think it, in many parts, an unnecessary and unadviseable departure from true republican and federal principles. 2.8.230

The Federal Farmer.

To the Republican.

1. It is intriguing to speculate why the letters begin in this way, especially since the "letters" of "last winter" could throw definitive light on the authorship; but my own speculations and search have been fruitless. There seems to be no record of any such letters or of the possible identity of the addressee, the Republican.

2. For an elaboration of the extreme parties, see I, 2.8.6–7; V, 2.8.62; VI, 2.8.68–73; VII, 2.8.97–98.

3. Alexander Pope, *Essay on Man*, epistle 3, lines 303–4. Pope's couplet was frequently discussed in the ratification literature, the classic case being the treatment in *The Federalist* no. 68, 461. See also Penn 3.12.4; [Maryland] Farmer II, 5.1.36. Generally the Anti-Federalist writers were more critical of the maxim than The Federal Farmer is here (but see III, 2.8.24–25; IX, 2.8.111; and he is specifically criticized on this point by a fellow Anti-Federalist writer, A Countryman (6.6.39). For Federalist discussions of the importance of good administration, see Poplicola 4.11.1 n.1.

4. The "critical" character of this period was not simply an invention of the Federalists or of Federalist historians. See VI, 2.8.70; Brutus I, 2.9.2; Old Whig IV, 3.3.18; Philadelphiensis I, 3.9.2.; Centinel IV, 2.7.91 n. 45.

5. The author is thinking of such men as Abraham Clark of New Jersey; Richard Caswell and Willie Jones of North Carolina; Patrick Henry, Thomas Nelson, and Richard Henry Lee of Virginia; all of whom were critics of the Constitution who had been elected to the Constitutional Convention but had declined to serve or failed to attend. See Farrand III, 557–59. Cf. Federal Farmer V, 2.8.62, and Lee's letter to Randolph, on 26 March 1787, expressing his confidence in the gentlemen appointed to the Convention (Lee, *Letters* II, 415). The discussion of the parties favoring and opposing the Constitution is continued in V, 2.8.62; VI, 2.8.68–73.

6. Pickering replied, "In the proposed Constitution there is no foundation for an aristocracy; for its officers (including in this term as well the legislative as the executive branches) do not hold their places by *hereditary* right, nor *for life*, nor by electing *one another;* neither is any portion of wealth or property a necessary qualification." Pickering and Upham, *The Life of Timothy Pickering* II, 353. However, it is not a conventional but the natural aristocracy that The Federal Farmer is concerned with. See III, 2.8.25; VII, 2.8.97.

7. Note that all of these, including the first, are described as forms under which the United States may exist *as one nation*. As Merrill Jensen says, the issue was not whether there was a "nation" before 1787. "There was a new nation, as the men of the time agreed: they disagreed as to whether the new nation should have a federal or a national government." Jensen, *New Nation* xiv. They also disagreed, however, about whether a nation *could* exist as a nation without a national government. Cf. James Wilson's similar statement of alternatives in his 24 November speech before the Pennsylvania ratifying convention. McMaster and Stone 225 ff; Elliot II, 427 ff.

8. See III, 2.8.35, where The Federal Farmer adds to the legitimate powers of the general government the regulation of trade between the states, but omits to mention the militia and bankruptcies. On bankruptcy laws, see XVIII, 2.8.221, where he concludes that the power to pass bankruptcy laws should not be given to the federal government.

9. The Federal Farmer displays a significant shift in terminology in this connection. Here he makes the then standard distinction between a federal plan, on the one side, a plan of consolidation, on the other side, and what he calls a "partial consolidation" in the middle, consisting of a combination of federal and consolidated or national principles. The distinctions are fundamentally identical to those drawn by Publius in *The Federalist* no. 39, 253–57. In his sixth essay, however, the advocates of the earlier and merely advisory "federal plan" become one kind of "pretended federalists" (the others being the advocates of the earlier "consolidation"), while the proponents of the earlier "partial consolidation" become the "true" or "honest federalists." See VI, 2.8.72. See Martin Diamond's essays, "What the Framers Meant by Federalism," *A Nation of States*, ed. Robert Goldwin, 2d ed. (Chicago 1974) 25–42; and "*The Federalists'* View of Federalism," *Essays on Federalism* (Claremont, Cal., 1961). On the characteristics of the "federal republic," see XVII, 2.8.204–5. For other important Anti-Federal discussions of the meaning of a federal system or fed-

eral republic, see Brutus I, 2.9.4–21; [Pennsylvania] Farmer 3.14.6–10; Henry 5.16.1–2; Clinton 6.13.2, 27.

10. Cf. Monroe's discussion of the desirability of consolidation if it were practicable, 5.21.12 n. 3.

11. On the question of a free and equal representation, see *The Federalist* nos. 35–36. Representation is one of The Federal Farmer's major themes. See III, 2.8.25–26, 39; V, 2.8.59–60; VI, 2.8.76–77; VII–XII, 2.8.93–165; XV, 2.8.190. The other major Anti-Federal discussions of representation will be found in Brutus I, 2.9.14–16; DeWitt 4.3.14; Cornelius 4.10.9; [Maryland] Farmer II, 5.1.22–32; V, 5.1.71–73; Chase 5.3.20; Republicus 5.13.3; Impartial Examiner 5.14.28–32.

12. On jury trials see IV, 2.8.44, 53–55; VI, 2.8.80; XV, 2.8.190–94.

13. A semicolon has been omitted here.

14. However, as Publius shrewdly argues, if the remote states share least in the circulation of the ordinary benefits of union, their exposed position gives them an unusually great dependence on the aid of the Union. The remote states get less out of the Union, but they need what they do get more, and thus the "proper equilibrium" is maintained. *The Federalist* no. 14, 87.

15. See below, n. 19.

16. See McMaster and Stone 144–45 (Wilson); Ford, *Pamphlets* 148–49 (An American Citizen), 361 (Iredell); Ford, *Essays* 165 (A Landholder), 397–98 (Hugh Williamson); Ford, *Pamphlets* 241 (Aristides). This point is made frequently by Federalists during the state ratification debates.

17. On the need for and functions of a Bill of Rights, see IV, 2.8.46–56; XVI, 2.8.196–203. On kinds of rights, see VI, 2.8.80–86.

18. Publius answers this argument (and its continuation in the next paper) in *The Federalist* no. 27. In no. 8, Publius describes in some detail an effect similar to that alluded to here by The Federal Farmer; but he derives it from a different cause, namely dissension among the states under an inadequate general government.

19. On the connection between free laws and the character of the people, see II, 2.8.18; V, 2.8.59; VII, 2.8.93–96; X, 2.8.127, 139; XVIII, 2.8.227. See also Cato III, 2.6.15–20; Centinel I, 2.7.9; Brutus I, 2.9.16; Federal Republican 3.6.21; Philadelphiensis II, 3.9.9; Turner 4.18; Columbian Patriot 4.28.2. This question is, of course, immediately connected with the question of representation; see above, n. 11.

20. An Anti-Federalist essayist, A Countryman from Dutchess County (6.6.42–64), points out that there is a substantial difficulty in the contention that good citizens should acquiesce even if essential alterations are not made.

21. On the natural aristocracy, see VI, 2.8.97.

22. A Countryman from Dutchess County makes the point, nearly always passed over even by the Anti-Federalists, that the Senate is not entirely on the federal plan, for each senator has one vote; whereas "by the present confederation, which is a union of the states, not a consolidation, *all the delegates*, from a state, have but one vote, and in the state senate, which is on the plan of consolidation, *each* senator has a vote" (6.6.45). Cf. [Pennsylvania] Farmer 3.14.14–15; Republicus 5.13.12. In the Additional Letters (XI, 2.8.143 ff) The Federal Farmer records a more favorable opinion of the "federal" basis of the senate. It should be noted that many Federalists defend the "federal" basis of the Senate as sound in principle and even assume that senators will be subject to instructions from their states. See especially Elliot II, 26 (Cabot), 47 (King); Ford, *Pamphlets* 40 (A Citizen of America), 206–7 (Fabius), 223 ff. (Aristides); Ford, *Essays* 29 (Cassius); *Pennsylvania Gazette* 30 January 1788 (A Freeman); *Virginia Independent Chronicle Extraordinary* 9 April 1788 (A Freeholder); *Maryland Journal* 1 August 1788 (Speech Intended to Have Been Delivered in Maryland Convention).

23. Publius presumably refers to The Federal Farmer when, in no. 68, 457–58, he writes that "the most plausible of [the opponents], who has appeared in print, has even deigned to admit that the election of the President is pretty well guarded." See Federal Farmer XIV, 2.8.177. James Wilson also noted that the scheme for selecting the President "is not objected to." McMaster and Stone 398. For criticism, however, see Republicus 5.13.13.

24. See Brutus IV, 2.9.48 n. 34.

25. Cf. *The Federalist* no. 35, 216–18.

26. Publius replies that if the government were interested in a system of influence, "the most certain road to the accomplishment of its aim would be to employ the State officers as much as possible, and to attach them to the Union by an accumulation of their emoluments." *The Federalist* no. 36, 228. The question of executive influence is discussed more fully and in broader terms in XIII, 2.8.166–72. Cf. Brutus III, 2.9.42 n. 29.

27. See Centinel II, 2.7.52 n. 30.

28. See Citizen of America, An Examination . . . , Ford, *Pamphlets* 49; and statement by Roger Sherman and Oliver Ellsworth, quoted by Old Whig VI, 3.3.37 and n. 35.

29. On the concurrent taxing powers of the national and state governments, see *The Federalist* nos. 32–34; no. 36, 227–29. Publius' basic argument is that a concurrent jurisdiction in this case was the only admissible substitute for an entire subordination of the states. For other Federal and Anti-Federal discussions of concurrent power to tax see McMaster and Stone 260 (Whitehill), 268–69 (Smilie); Ford, *Pamphlets* 50–51 (Webster); Ford, *Essays* 235–36 (Sherman); Elliot II, 333, 337, 372 (Smith); 339 (Williams), 346 (R. R. Livingston), 361–64 (Hamilton), 372 (Lansing); Elliot III, 306, 332 (Madison); Elliot IV, 75 (Spenser); Brutus I, 2.9.5; Old Whig VI, 3.3.33–39; Mason 5.17.1.

30. See above, n. 11.

31. The arguments here about the select militia and the *posse commitatus* versus military execution are answered directly, though not by name, in *The Federalist* no. 29, 182ff. Regarding the former, Publius professes himself perplexed how to treat the objections, but his raillery touches a sensitive point: "Where in the name of common sense are our fears to end if we may not trust our sons, our brothers, our neighbours, our fellow-citizens?" Ibid. 185.

32. On further reflection, The Federal Farmer concluded that the power to pass bankruptcy laws should not be given to the federal government. See XVIII, 2.8.221.

33. The judiciary is discussed fully in XV, 2.8.183–95. See Pickering's well-argued replies to The Federal Farmer's contentions on this head; Pickering and Upham, *The Life of Timothy Pickering* II, 359–60, 366–67.

34. See Democratic Federalist 3.5.6 n. 6.

35. See above, n. 28.

36. See above, n. 17.

37. Cf. Chief Justice Marshall's argument in *McCulloch* v. *Maryland*, 4 Wheat. 316, 403 (1819); and Publius in *The Federalist* no. 39, 253–54.

38. See Ford, *Essays* 163 (A Landholder); Ford, *Pamphlets* 77 (A Citizen of New York); *The Federalist* no. 84; Edmund Pendleton, letter to Lee, 14 June 1788, David John Mays, ed., *The Letters and Papers of Edmund Pendleton* (Charlottesville 1967) II, 532; *A Native of Virginia, Observations upon the Proposed Plan of Federal Government* (Petersburg 1787), reprinted in *The Writings of James Monroe* ed. S. M. Hamilton (1898–1903) I, 352 ff. (but not written by Monroe). For Anti-Federal rebuttals, see One of the Common People 4.8.1 n. 1; [New Hampshire] Farmer 4.17.2.

39. This argument is not entirely consistent with the preceding one, but Federalists, notably James Wilson, made them both. See [New Hampshire] Farmer 4.17.14 n. 9. See McMaster and Stone 143–44 (Wilson), 189 (Plain Truth), 377 (McKean); Ford, *Essays* 45–46 (Cassius); Ford, *Pamphlets* 242 (Aristides), 356 ff. (Iredell); Elliot IV, 259 (Pinckney). For Anti-Federal replies see Martin 2.4.38 n. 9; Brutus II, 2.9.26; Cincinnatus I, 6.1.4; DeWitt 4.3.7.

40. See Impartial Examiner 5.4.5; Henry 5.16.24. On this whole question, see Federal Farmer XVI, 2.8.196 ff.

41. See Brutus II, 2.9.30 n. 22.

42. See above, nn. 12, 16.

43. John Adams, *Defence* I, preface (*Works* IV, 290–91).

44. See VI, 2.8.71. For other Anti-Federal discussions of the ever-alert aristocracy, see [Maryland] Farmer IV, 5.1.26–32; Henry 5.16.7–8; Plebeian 6.11.2.

45. Dickinson, *Letters from a Farmer in Pennsylvania* XI.

46. See above, n. 19, and III, 2.8.39; see VI, 2.8.97; see below, n. 91. Cf. the arguments of A Citizen of America (Noah Webster) and A Landholder (Oliver Ellsworth), Ford, *Pamphlets* 57–61; Ford, *Essays* 166.

47. See above, n. 11.

48. See Pennsylvania Convention Minority 3.11.6–12; Centinel III, 2.7.70.

49. See below, Philadelphiensis I, 3.9.2–6.

50. Delaware, Pennsylvania, New Jersey.

51. On the parties, see above, n. 2; on the forms of "federalism" see above, nn. 7, 9. On Anti-Federal attacks on the framers, see Centinel III, 2.7.70.

52. The author probably refers here principally to the vigorous replies to and attacks on Mason, Gerry, and Lee made by A Landholder (Oliver Ellsworth) in a series of essays published in late 1787. See Ford, *Essays* 150–66, 173–77. A Landholder described Lee as possessing a "factious spirit" and an "implacable hatred to General Washington," and suggested that he was "the author of most of the scurrility poured out in the New York papers against the new constitution." Ford, *Essays* 161. Other Federalist writers referred to Lee, and especially to Mason and Gerry by name (all of them having published criticisms of the Constitution over their own names); but on the whole the Anti-Federalists at least equaled their opponents in personal attacks.

53. *The Letters of Junius* [Woodfall's Junius]; see VIII, 2.8.107 and n. 69.

54. "It is a pity that the expectations which actuated the authors of the existing confederation, neither have nor can be realized:—accustomed to see and admire the glorious spirit which moved all ranks of people in the most gloomy moments of the war, observing their steadfast attachment to Union, and the wisdom they so often manifested both in choosing and confiding in their rulers, those gentlemen were led to flatter themselves that the people of America only required to know what ought to be done, to do it. The amiable mistake induced them to institute a national government in such a manner, as though very fit to give advice, was yet destitute of power, and so constructed as to be very unfit to be trusted with it. They seem not to have been sensible that mere advice is a sad substitute for laws; nor to have recollected that the advice even of the allwise and best of Beings, has been always disregarded by a great majority of all the men that ever lived." A Citizen of New York [John Jay], "An Address to the People of the State of New-York," 1787, Ford, *Pamphlets* 71.

The Articles of Confederation, A Citizen of Philadelphia wrote, "was an honest and solemn covenant among our infant States, and virtue and common danger supplied its defects." McMaster and Stone 106.

55. Note that in the sequel the distinction made here is not maintained, and the list given is of "unalienable or fundamental rights in the United States" VI, 2.8.86. See II, 2.8.19, where The Federal Farmer also writes of "unalienable and fundamental rights."

56. See above, n. 19.

57. See above, n. 11.

58. The second point is not reached until letter XII, 2.8.148, at which time the numbering is abandoned.

59. See above, V, 2.8.59.

60. See above, II, 2.8.15. Publius contends that "the idea of an actual representation of all classes of the people by persons of each class is altogether visionary." *The Federalist* no. 35, 219. The Federal Farmer is not referring specifically to *The Federalist*, however, since the essay of Publius was first published on 5 January 1788, while this essay of The Federal Farmer is dated 31 December 1787.

61. Cesare Bonesana Beccaria, *An Essay on Crimes and Punishments* (London 1767), Introduction; quoted in "Address to Inhabitants of Quebec, October 26, 1774" (written by R. H. Lee), *Journals of the Continental Congress* I, 106. This edition of Beccaria's book, like the other early English translations, followed Beccaria's original (1764) organization of chapters. Beccaria himself later accepted an improved organization made in the 1766 translation into French by André Morellet. This is the preferable text, and it is the one used in the modern collection of Beccaria's works and in a recent Library of Liberal Arts paperback edition of *On Crimes and Punishments*. Unfortunately, the specific passage here, which was quoted by the Con-

tinental Congress and by several Anti-Federalists and which was the first sentence in the original introduction, was considerably altered in the revision, making the modern editions different in this crucial respect from those available to the American founding generation. See Cesare Beccaria, *Opere*, ed. Sergie Romagnoli (Florence 1958) I, 39; II, 862–63; Cesare Beccaria, *On Crimes and Punishments*, trans. Henry Paolucci (Indianapolis 1963).

62. *The Spirit of Laws* XI, ch. 6.

63. See Ibid. II, ch. 2.

64. John Adams gave good and influential expression to the stock of ideas on the natural aristocracy upon which the Anti-Federalists drew. See his *Defence*, letter 25 (*Works* IV, 396–98). For other Anti-Federalist discussions of the natural aristocracy, see above, III, 2.8.25; Cato VI, 2.6.43; Brutus III, 2.9.42; [Maryland] Farmer II, 5.1.26–32; Smith 6.12.22 n. 24. For Federalist replies, see McMaster and Stone 335–36 (Wilson); Elliot II, 256 (Hamilton); *Carlisle Gazette* 24 October 1787 (A Citizen).

65. While the thought is a common one, I have not been able to find the specific source of the observation about merchants. Regarding the schools, John Adams wrote: "Monarchies and aristocracies are in possession of the voice and influence of every university and academy in Europe. Democracy, simple democracy, never had a patron among men of letters. Democratical mixtures in government have lost almost all the advocates they ever had out of England and America." John Adams, *Defence*, preface (*Works* IV, 289).

66. This consideration takes place in letters VIII–X, 2.8.102–42.

67. J. L. DeLolme, *The Constitution of England*, 3d. ed. (London 1781). DeLolme's ideas of balanced government are different in important respects from The Federal Farmer's. See IX, 2.8.125.

68. DeLolme, *The Constitution of England* II, ch. 6. DeLolme's emphasis is considerably different from The Federal Farmer's. Indeed, the reference here is to a footnote at the conclusion of a chapter in which DeLolme has argued the advantages of having a small, select body to represent the people.

69. *The Letters of Junius* I, letter 18.

70. Cf. *The Federalist* no. 10; Cato II, 2.6.8 n. 6.

71. DeLolme, *The Constitution of England* II, ch. 5.

72. The Federalists do not make quite such a broad argument. But see below, n. 73, and Ford, *Pamphlets* 86 (A Citizen of New York), 123–25, 131 (A Citizen of Philadelphia); McMaster and Stone 274–75, 280 (McKean); Elliot II, 44 (Brooks), 87 (Bowdoin); Elliot III, 536–37 (Madison); *Gazette of the State of Georgia* 15 November 1787 (Demosthenes Minor); *Virginia Independent Chronicle* 2 April 1788 (Cassius). Cf. Martin 2.4.39 ff; Pennsylvania Convention Minority 3.11.31–37; Symmes 4.5 passim; Agrippa X, 4.6.43; XII, 4.6.58; Turner 4.18.1; Republican Federalist 4.13.21; Henry 5.16.7; Elliot III, 489 (Monroe), 494 (Mason).

73. ". . . it is a most illiberal reflection thrown out by this antifederal demagogue [Centinel] against the freemen of America, who, I trust, will always elect to this important trust men of integrity and abilities." A Federalist, McMaster and Stone 172. See *The Federalist* 35, 219; McMaster and Stone 172 (A Federalist), 193 (Plain Truth), 275 (McKean); 304, 337, 395 (Wilson); 439 (Candid); Elliot II, 257 (Hamilton); Elliot III, 372 (Madison). See Smith 6.12.34 n. 32.

74. See above, VIII, 2.8.99.

75. Cf. above, n. 11.

76. See McMaster and Stone 287–88 (Wilson), 171 (A Federalist); Ford, *Pamphlets* 169 (Fabius), 337 (Marcus); Elliot II, 38 (Dana), 273–74 (Hamilton).

77. McMaster and Stone 351–53 (Wilson), 274 (McKean), 439 (Candid); Ford, *Pamphlets* 124 (A Citizen of Philadelphia), 225 (Aristides), 360 (Marcus); Ford, *Essays* 219–20, 222–23 (A Countryman); cf. Cornelius 4.10.8–9.

78. See X, 2.8.128–29.

79. See *The Federalist* nos. 23, 26, 28, 31; Ford, *Essays* 149, 156–57 (A Landholder); McMaster and Stone 147–48, 410–11 (Wilson).

80. "While Americans remain in their present enlightened condition, and warmly attached to the cause of liberty, they cannot be enslaved. Should the general government become so lost to all sense of honor and the freedom of the people, as to attempt to enslave them, they who are the descendents of a race of men who have dethroned kings, would make an American Congress tremble, strip them of their public honors and reduce them to the lowest state of degradation." Elliot II, 169–70 (Stillman). See Ford, *Pamphlets* 55–56 (A Citizen of America). Also McMaster and Stone 136 (A Mechanic); Ford, *Essays* 166 (A Landholder); Ford, *Pamphlets* 127 (A Citizen of Philadelphia); 174, 202 (Fabius), 233, 256 (Aristides); Elliot III, 10 (Nicholas); Elliot IV, 95 (Iredell); *The Federalist* nos. 26, 28, 46, 60. See below, n. 91.

81. The Federalists seldom make quite this argument. See Ford, *Pamphlets* 152–53 (An American Citizen); cf. the views of Publius, *The Federalist* no. 28; Wilson, McMaster and Stone 147, 264; and Aristides, Ford, *Pamphlets* 255. For arguments that the states will not be destroyed because they are an indispensable part of the new government, see Centinel II, 2.7.36 n. 16.

82. See XVII, 2.8.210; *The Federalist* no. 16, 103. For other discussions of this important question see Brutus X, 2.9.128 n. 84.

83. See *The Federalist* no. 55; Ford, *Essays* 240 (A Citizen of New Haven), 152 (A Landholder); McMaster and Stone 288, 394 (Wilson).

84. See XVII, 2.8.204–5, 209–10; above, X, 2.8.128. On the insignificance of the states' functions as "boards of election" see Federal Republican 3.6.37; Pennsylvania Convention Minority 3.11.24.

85. See McMaster and Stone 192 (Plain Truth), 336 (Wilson); Ford, *Essays* 240 (A Citizen of New Haven).

86. XVII, 2.8.204–13.

87. See Ford, *Essays* 151–52 (A Landholder); McMaster and Stone 288 (Wilson); *The Federalist* no. 55, 374.

88. See *The Federalist* no. 58, 391–95. Also Ford, *Essays* 152 (A Landholder), 236 (A Citizen of New Haven); Ford, *Pamphlets* 169, 170 (Fabius); McMaster and Stone 288 (Wilson), 370 (McKean); Elliot II, 238, 253 (Hamilton).

89. Ford, *Essays* 164 (A Landholder).

90. McMaster and Stone 292 (Hartley), 305 (Wilson); Ford, *Pamphlets* 127 (A Citizen of Philadelphia); Elliot IV, 185 (Iredell); see below, n. 91.

91. See above, nn. 46, 80. See Ford, *Pamphlets* 86 (A Citizen of New York); 180, 186, 188 (Fabius); Ford, *Essays* 166 (A Landholder); Elliot II, 200 (Huntingdon); Elliot III, 14 (Nicholas), 536–37 (Madison); *Virginia Independent Chronicle* 30 January 1788 (Civis Rusticus); *State Gazette of South Carolina* 6 December 1787 (Maecenas).

92. See above, III, 2.8.28.

93. Cf. Madison's discussion of the Senate in the Constitutional Convention, Farrand I, 151–52 (7 June).

94. *The Spirit of Laws* II, ch. 2.

95. See II, 2.8.15.

96. See VI, 2.8.89.

97. On the subject of appointments, the specific subject of this and the following letters, see *The Federalist* no. 76. The broader questions treated here—especially the relations between the legislature and the executive—need to be considered in the light of Publius' full treatment of the executive in nos. 67–77.

98. See above, IX, 2.8.119–23.

99. See Ford, *Pamphlets* 140, 144 (An American Citizen), 228 (Aristides); McMaster and Stone 337 (Wilson). See also *The Federalist* no. 57, 386; no. 60, 403; and Farrand II, 283–84 (14 August; Charles Pinckney).

100. In its early deliberations the Convention accepted the provision of the Virginia resolution for ineligibility. The decisive shift toward the milder prohibition that found its way into the Constitution came on 3 September. See Farrand II, 489–92. See above, Martin 2.4.46–48.

101. See above, XI, 2.8.147.

102. Presumably Publius. Thirty-eight numbers of *The Federalist* had appeared by the date of this letter (14 January). Publius' papers on the executive did not come until the middle of March, and he was thus able to take up the contentions of The Federal Farmer.

103. See *The Federalist* no. 48; Centinel II, 2.7.50 n. 29; Lee's letter to Randolph, 5.6.

104. A certain irony here is matched by Publius in his almost opposite observation on executive power. See *The Federalist* no. 72, 456–87.

105. See above, III, 2.8.29.

106. The argument here should be compared with Publius' defense of unity in the executive. *The Federalist* nos. 71–72. The Federal Farmer's argument is the more traditional one, the immediate source of which may have been Blackstone's defense of monarchy, though The Federal Farmer of course rejects the hereditary principle. See particularly Blackstone's discussion of the royal dignity in *Commentaries on the Laws of England* I, 241.

107. Although Publius had not yet made the argument to this effect that appears in *The Federalist* no. 72, 488–89, it should be compared with The Federal Farmer's argument here. The argument was of course a very common one among the Federalists. Cf. Ford, *Essays* 234, 237 (A Citizen of New Haven); Farrand II, 53 (19 July; Gouverneur Morris); Elliot II, 320–21 (Hamilton), 293 (R. R. Livingston); Elliot III, 485–86 (Randolph); Elliot IV, 103–4 (Davie), 315 (Gen. C. C. Pinckney). The Anti-Federalist argument is well presented by Cato [South Carolina] 5.10.2.

108. Some objects of the power of the judiciary are in fact treated later in this essay, others are taken up in XVIII, 2.8.214–30, although the subject is not given separate treatment.

109. See DeLolme, *The Constitution of England* I, ch. 12, end.

110. Cf. *The Federalist* no. 78, 522–23: "Whoever attentively considers the different departments of power must perceive that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them. . . . [T]he judiciary is beyond comparison the weakest of the three departments of power. . . .[T]hough individual oppression may now and then proceed from the courts of justice, the general liberty of the people can never be endangered from that quarter; I mean so long as the judiciary remains truly distinct from both the legislature and the executive."

111. Some Federalists argued that review of facts would be by a second jury. See A Citizen of America, Examination . . . , Ford, *Pamphlets* 53; *The Federalist* no. 81, 550. On the general issue of review of law and fact, see *A Democratic Federalist* 3.5.6 n. 6.

112. See above, n. 12.

113. See above, n. 16.

114. See *The Federalist* no. 80, 539–40.

115. On bills of rights see above, II, 2.8.19–20.

116. See above, nn. 38, 39, 40. For Federalist arguments that a bill of rights would be dangerous, see *The Federalist* no. 84, 579; McMaster and Stone 143–44, 253–54 (Wilson), 189 (Plain Truth), 296 (Yeates); Ford, *Pamphlets* 242 (Aristides), 360 (Marcus); Elliot III, 191 (Randolph), 620 (Madison); Elliot IV, 141 (Maclaine), 142 (Johnston), 149, 167 (Iredell), 316 (General Pinckney).

117. James Wilson, "Address to the Citizens of Philadelphia," McMaster and Stone, 143–44. See Brutus II, 2.9.30 n. 22.

118. For other expressions of this important theme, see Old Whig IV, 3.3.21–24; Impartial Examiner 5.14.5, 10; Henry 5.16.35–38; Delegate Who Has Catched Cold 5.19.13–17; Sentiments of Many, passim. A good statement of this view of a bill of rights is provided by Edmund Randolph in commenting on the Virginia Declaration of Rights. See Bernard Schwartz, *The Bill of Rights* (New York 1971) I, 249.

119. See II, 2.8.16 n. 12.

120. Blackstone, *Commentaries on the Laws of England* III, 379.

121. [While the precise reference has not been located, the context suggests De-

Lolme, *The Constitution of England,* perhaps II, ch. 21. See text at n. 122 below (XVI, 2.8.203), which was located in DeLolme; see also text at n. 67 (VIII, 2.8.102), where The Federal Farmer identifies DeLolme and praises him.—M.D.]

122. DeLolme, *The Constitution of England* I, ch. 3.

123. See McMaster and Stone 264, 390 (Wilson); Ford, *Pamphlets* 39 (A Citizen of America), 121 (A Citizen of Philadelphia), 207 (Fabius), 247–48 (Aristides); Ford, *Essays* 238 (A Citizen of New Haven); Elliot II, 46 (Ames); Elliot IV, 58 (Davies). Publius, it should be noted, does not acknowledge this proposition. See *The Federalist* nos. 9, 15, 39. See Centinel V, 2.7.94.

124. I, 2.8.1.

125. Cf. *The Federalist,* esp. no. 23, 147–51; no. 31, 193–96.

126. See above, n. 80.

127. See *The Federalist* no. 28, 179; cf. the argument here with *The Federalist* no. 10.

128. See *The Federalist* no. 17, 107; no. 27, 172–73; McMaster and Stone 302, 325 (Wilson), Elliot II, 46 (Ames); 239, 267, 304, 354 (Hamilton); Elliot III, 18 (Nicholas), 257–59 (Madison). Cf. below, Brutus XI, 2.9.130 n. 87.

129. See Brutus V, 2.9.58–59; VI, 2.9.77–78.

130. See above, I, 2.8.10.

131. See Brutus XII, 2.9.155–57.

132. James Wilson, Philadelphia ratifying convention, McMaster and Stone 324.

Essays of Brutus

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The essays of Brutus are among the most important Anti-Federalist writings. In clear and forceful argument Brutus takes up in a highly competent way the major Anti-Federalist themes, such as consolidation,[1] the small republic, a bill of rights, and representation.[2] He provides the best Anti-Federalist rebuttal of the powerful Federalist argument, well known in the form given it by Publius, that the federal government must be given unlimited powers to meet the unlimited contingencies implicit in its vast responsibility. He provides an extended and excellent discussion—the best in the Anti-Federalist literature—of the judiciary to be established under the Constitution and its far-reaching implications.[3] In these latter respects and in general, the *Brutus* essays are the most direct Anti-Federal confrontation of the arguments of *The Federalist*.

The essays appeared in the *New York Journal* between October 1787 and April 1788, during which time the first seventy-seven papers of *The Federalist* also appeared. They were widely reprinted and referred to; but despite their importance and high quality, they had never been reprinted in their entirety until 1971.[4]

The essays have generally been attributed to Robert Yates on the authority of Paul Leicester Ford. The attribution is somewhat questionable, Ford himself having first attributed the essays to Thomas Treadwell (as did Samuel B. Harding), then changing his mind.[5] Ford does not give the evidence for concluding that Yates was the author. As Morton Borden correctly observes, the Brutus essays are clearly superior to the essays of Sydney, which have also been attributed to Yates;[6] if, however, the latter were written by Abraham Yates, as DePauw contends,[7] that would leave the field clear for Robert as Brutus. Ford does not give the evidence on which he formed his judgment, and no evidence one way or the other has been unearthed by the present editor.[8] (This Brutus is in any case not to be confused with Brutus [Virginia] 5.15.)

There follows an extended outline of the argument of Brutus.

Introduction—Importance of decision, need for care (I, 2.9.1–3).

I. Basic question: Is confederated government best for U.S.? (I, 2.9.1–21).

A. Government proposed is, though not perfect consolidation, so close as to terminate in it (I, 2.9.4–9).
   1. It is supreme within its sphere (necessary and proper clause); so far as its powers reach, it is a complete government, not a confederation (2.9.5).
   2. Powers are ostensibly limited but extend to everything of importance (2.9.5–9).
      a. Taxing power is complete and implies or draws with it all other powers (2.9.5).
      b. Judicial power is extensive and will eclipse state courts (2.9.7).
      c. Necessary and proper clause might be interpreted to give Congress complete control over states (2.9.8–9).

(Back then to question, 2.9.10).

B. Can free government be exercised over the whole U.S. reduced to one state? No.
   1. Authority denies it (2.9.11).
   2. History denies it (2.9.12).
   3. Reason denies it (2.9.13–20).
      a. Distinction between despotic government, pure democracy, free (representative) republic, the last being at issue here (2.9.13).
      b. Impossibility of a representation, in a country so large and populous as the U.S., that will speak the sentiments of the people without becoming too numerous for business (2.9.14–15).
      c. Free republic requires a similarity of manners, sentiments, interests in contrast to U.S. variety (2.9.16).
      d. Execution of laws in free republic depends on confidence of people, which must be lacking in so extensive a country (2.9.17–18).
      e. Legislature cannot have necessary knowledge of and time to deal with concerns and wants of different parts (2.9.19).
      f. In such an extensive republic officers of government would soon rise above control of people and abuse their power (2.9.20).

Above argument at least shows necessity, in forming government for this country, of (1) limiting and defining powers, (discussed in V–XV); (2) adjusting parts, (discussed in III, IV, XVI); (3) guarding against abuse of authority (discussed in II, 2.9.22–23).

II. Bill of Rights (II, 2.9.22–33).
   A. The origins of civil government—kinds of individual rights. Foundation should be laid in express reservations by people of such of their essential national rights as are not necessary to be parted with (2.9.24; see IX, 2.9.102).

B. Bill of Rights as necessary for federal government as for states (2.9.26–33).
   1. It is necessary, for example, in protection of individual in criminal prosecution (2.9.27–28).
   2. It is necessary, for example, as certain provisions in proposed constitution themselves show (2.9.29–30; see IX, 2.9.103–4).
   3. This is an original compact, doing away with all provisions of state constitutions that are inconsistent (2.9.31–32).
   4. A Bill of Rights is all the more necessary in view of unrestrained power to make treaties, which become part of supreme law of land (2.9.33).

III. Organization of government—representation (III, IV, 2.9.34–54). (III and IV deal with the question of representation, particularly in the House of Representatives; the discussion is important but [especially IV] somewhat disorderly. The discussion may be grouped among the major headings, as follows.)
   A. Representation of slaves unreasonable and unjust (III, 2.9.38–39).
   B. Equal representation of states in Senate unreasonable and unjust (III, 2.9.40).
   C. The representation is merely nominal—not sufficiently numerous to enable it to resemble the people, to contain representatives of several orders of people, to resist tendency of natural aristocracy to rule, to enable people to have knowledge of representatives (III, 2.9.41–42; IV, 2.9.45, 48–49).
   D. There will be no security in so small a body as House of Representatives against influence and corruption (III, 2.9.42–44; IV, 2.9.47).
   E. Feeble representation will not command confidence of people, which is necessary to the execution of the law in free government; thus execution by military force will be necessary (IV, 2.9.48–50).
   F. Danger of "time/place/manner" provision (IV, 2.9.51–53).
   G. Not sufficient to say good men will rule—constitutions are to regulate conduct of bad men (IV, 2.9.54).

IV. Legislative powers are broad and indefinite (V–X, 2.9.55–129). (Instead of proceeding with enquiry into the organization of the system, Brutus turns next to powers granted to legislature, V, 2.9.55. The discussion of organization is resumed in XVI, 2.9.197 ff.)
   A. Preamble and necessary and proper clause, taken together, confer what amounts to a power to make laws at discretion. Rule of broad construction stated (V, 2.9.57).
   B. Taxing power (V, VI, VIII, 2.9.55–92).
      1. General welfare clause broadly construed. (V, 2.9.58; VI, 2.9.77–78).
      2. The power to tax is unlimited (V, 2.9.59–60; VI, 2.9.71–78).
      3. The power to tax will annihilate power of individual states (V, 2.9.61–63; VI, 2.9.64–70, 75–76).

4. The argument that the power given to the general government must be unlimited because the exigencies of the federal government are unlimited is insufficient:
   a. National safety is not the only end; the states are responsible for managing internal concerns, which are in fact first objects of government and which also require revenue (V, 2.9.63; VI, 2.9.79–81).
   b. A distinction could have been drawn between external and internal taxes (V, 2.9.63; VII, 2.9.92).
   c. The aim of American governments is, or ought to be, not glory but domestic peace and justice (VII, 2.9.86–87).
   d. Granting the need for additional federal powers and granting that remote contingencies cannot be foreseen, yet the powers need not be unlimited, for rational judgments of need can be made (VII, 2.9.88–90).

C. Authority to borrow money is general and unlimited (VIII, 2.9.93–95).

D. Power to raise armies (VIII, IX, X, 2.9.93–129).
   1. This power is indefinite and unlimited (VIII, 2.9.96–97).
   2. Standing armies are dangerous to liberty (VIII, 2.9.99–101; IX, 2.9.105, 110; X, 2.9.115–20).
   3. Explicit prohibition of standing army is needed; a general reliance on sentiments of people and resistance of states not sufficient (IX, 2.9.106–9; X, 2.9.129).
   4. Answers to Federalist arguments of necessity of standing army and impracticality of restriction (IX, 2.9.111–14; X, 2.9.121–27).

V. Nature and extent of judicial power (XI–XV, 2.9.130–196). (This subject is little discussed in other writings, yet the real effects of the new system of government will be brought home to the people through the judiciary, which occupies a position totally independent. X, 2.9.130).
   A. Judicial power of constitutional interpretation (X–XII, 2.9.115–158). (Without trying to give perfect explanation, will show that federal judiciary will subvert state judiciary, if not legislatures. XI, 2.9.133).
      1. Federal courts are vested with power to resolve, according to spirit as well as letter, all questions of construction of Constitution (XI, 2.9.134–38).
      2. Judicial power will subvert state governments and favor general government (XI, 2.9.139–44).
         a. Wide and general terms of the Constitution countenance such a construction. If necessary and proper clause does not grant additional powers, it does sanction broad construction (XI, 2.9.139–41).
         b. Court will be interested in broad interpretation (XI, 2.9.142).
         c. British precedent will favor it (XI, 2.9.143–44).

3. How judicial power will operate to extend legislative and judicial authority of federal government and finally destroy such authority of states (XII, 2.9.145–58; see XV, 2.9.194–96).

B. Other matters of which federal judiciary has cognizance (XIII–XIV, 2.9.159–85).
   1. Authority in all cases arising under laws of U.S., which is proper (XIII, 2.9.159).
   2. Power to decide all cases in law and equity under treaties is unintelligible—what is equity under treaty (XIII, 2.9.160)?
   3. Jurisdiction over cases affecting ambassadors, where U.S. is a party, and between states is proper; but doubt if Supreme Court should have original jurisdiction (XIII, 2.9.160; XIV, 2.9.168).
   4. Jurisdiction over controversies between state and citizen of another state not proper (extended discussion) (XIII, 2.9.161–67).
   5. Appellate jurisdiction of Supreme Court is one of most objectionable parts of Constitution (XIV, 2.9.169).
      a. Appeals in criminal matters is new and harmful (XIV, 2.9.170–72).
      b. Appellate jurisdiction, as granted, in civil cases eliminates final jury trial of facts, despite confused denials of advocates, and will lead to great expense and delay (XIV, 173–78, 184–85).
      c. These extraordinary powers all the more objectionable because not needed; state courts provide protection of individual rights (XIV, 2.9.179–83).

C. Supreme Court under Constitution will be exalted above all other power in government and subject to no control (XV, 2.9.186–97).
   1. Judges in England hold offices during good behavior but are more carefully circumscribed (2.9.187–88).
   2. Proposed judiciary is independent in fullest sense; yet British reason for independence of crown does not apply here (2.9.189–90).
      a. No superior to correct errors or control decisions (2.9.191).
      b. No removal or diminution of salary for error (2.9.192).
      c. Power of Court often superior to legislature—can declare acts of legislature void (2.9.193–96).

D. Judiciary should be subject to control of some supreme body that is responsible to the people (XVI, 2.9.197).

VI. Senate (XVI, 2.9.197–204). (A very sketchy discussion).

A. Organization (2.9.198–202).
   1. Election by state is proper for confederal system (2.9.198–99).
   2. Term too long, and rotation and recall should be provided (2.9.200–201).

B. Powers (2.9.202–4). The Senate will possess a strange mixture of legislative, executive, and judicial powers, which will clash with each other.

1. Centinel, in his third letter (III, 2.7.77), thought that his proposed discussion of the dangers of consolidation had been rendered superfluous by the appearance of the first number of Brutus.

2. Cato contents himself with a very brief discussion of representation (V, 2.6.38), referring his reader to the able and full discussion of Brutus, which had appeared by the time Cato reached this subject.

3. Edward S. Corwin, recognizing the importance of the essays dealing with the judiciary, reprinted essays XI, XII, XV in his *Court over Constitution* (Princeton, N.J., 1938) 231–62.

4. William Jeffrey, Jr., "The Letters of Brutus—A Neglected Element in the Ratification Campaign of 1787–88," *University of Cincinnati Law Review* 40, no. 4 (1971): 643–777.

5. Ford, *Pamphlets* 117, 424; Harding, *The Contest over Ratification of the Federal Constitution in Massachusetts* 17 n. 3; Ford, *Essays* 295.

6. See below Sydney 6.9. Morton Borden, *The Antifederalist Papers* (East Lansing, Mich., 1965) 42.

7. DePauw, *The Eleventh Pillar* 131.

8. At one point Brutus disclaims the legal knowledge necessary to discuss fully the judiciary (below, XI, 2.9.132), which might seem to argue against the authorship of Yates, who was a lawyer and judge. But the legal knowledge actually displayed is considerable and argues rather in favor of Yates' authorship. William Jeffrey, Jr., makes the appealing suggestion of Melancton Smith, but the circumstantial case is not a very persuasive one. See *University of Cincinnati Law Review* 40, no. 4 (1971): 644–46.

I[1]

18 October 1787

To the Citizens of the State of New-York.

When the public is called to investigate and decide upon a question in which not only the present members of the community are deeply interested, but upon which the happiness and misery of generations yet unborn is in great measure suspended, the benevolent mind cannot help feeling itself peculiarly interested in the result. 2.9.1

In this situation, I trust the feeble efforts of an individual, to lead the minds of the people to a wise and prudent determination, cannot fail of being acceptable to the candid and dispassionate part of the community. Encouraged by this consideration, I have been induced to offer my thoughts upon the present important crisis of our public affairs.

Perhaps this country never saw so critical a period in their political concerns. We have felt the feebleness of the ties by which these United-States are held together, and the want of sufficient energy in our present con- 2.9.2

federation, to manage, in some instances, our general concerns. Various expedients have been proposed to remedy these evils, but none have succeeded. At length a Convention of the states has been assembled, they have formed a constitution which will now, probably, be submitted to the people to ratify or reject, who are the fountain of all power, to whom alone it of right belongs to make or unmake constitutions, or forms of government, at their pleasure. The most important question that was ever proposed to your decision, or to the decision of any people under heaven, is before you, and you are to decide upon it by men of your own election, chosen specially for this purpose. If the constitution, offered to your acceptance, be a wise one, calculated to preserve the invaluable blessings of liberty, to secure the inestimable rights of mankind, and promote human happiness, then, if you accept it, you will lay a lasting foundation of happiness for millions yet unborn: generations to come will rise up and call you blessed. You may rejoice in the prospects of this vast extended continent becoming filled with freemen, who will assert the dignity of human nature. You may solace yourselves with the idea, that society, in this favoured land, will fast advance to the highest point of perfection; the human mind will expand in knowledge and virtue, and the golden age be, in some measure, realised. But if, on the other hand, this form of government contains principles that will lead to the subversion of liberty—if it tends to establish a despotism, or, what is worse, a tyrannic aristocracy; then, if you adopt it, this only remaining assylum for liberty will be shut up, and posterity will execrate your memory.

2.9.3 Momentous then is the question you have to determine, and you are called upon by every motive which should influence a noble and virtuous mind, to examine it well, and to make up a wise judgment. It is insisted, indeed, that this constitution must be received, be it ever so imperfect. If it has its defects, it is said, they can be best amended when they are experienced. But remember, when the people once part with power, they can seldom or never resume it again but by force. Many instances can be produced in which the people have voluntarily increased the powers of their rulers; but few, if any, in which rulers have willingly abridged their authority. This is a sufficient reason to induce you to be careful, in the first instance, how you deposit the powers of government.

2.9.4 With these few introductory remarks, I shall proceed to a consideration of this constitution:

The first question that presents itself on the subject is, whether a confederated government be the best for the United States or not?[2] Or in other words, whether the thirteen United States should be reduced to one great republic, governed by one legislature, and under the direction of one executive and judicial; or whether they should continue thirteen confederated republics, under the direction and controul of a supreme federal head for certain defined national purposes only?

This enquiry is important, because, although the government reported by the convention does not go to a perfect and entire consolidation, yet it approaches so near to it, that it must, if executed, certainly and infallibly terminate in it.

This government is to possess absolute and uncontroulable power, legislative, executive and judicial, with respect to every object to which it extends, for by the last clause of section 8th, article 1st, it is declared "that the Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution, in the government of the United States; or in any department or office thereof." And by the 6th article, it is declared "that this constitution, and the laws of the United States, which shall be made in pursuance thereof, and the treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution, or law of any state to the contrary notwithstanding." It appears from these articles that there is no need of any intervention of the state governments, between the Congress and the people, to execute any one power vested in the general government, and that the constitution and laws of every state are nullified and declared void, so far as they are or shall be inconsistent with this constitution, or the laws made in pursuance of it, or with treaties made under the authority of the United States.—The government then, so far as it extends, is a complete one, and not a confederation. It is as much one complete government as that of New-York or Massachusetts, has as absolute and perfect powers to make and execute all laws, to appoint officers, institute courts, declare offences, and annex penalties, with respect to every object to which it extends, as any other in the world. So far therefore as its powers reach, all ideas of confederation are given up and lost. It is true this government is limited to certain objects, or to speak more properly, some small degree of power is still left to the states, but a little attention to the powers vested in the general government, will convince every candid man, that if it is capable of being executed, all that is reserved for the individual states must very soon be annihilated, except so far as they are barely necessary to the organization of the general government. The powers of the general legislature extend to every case that is of the least importance—there is nothing valuable to human nature, nothing dear to freemen, but what is within its power. It has authority to make laws which will affect the lives, the liberty, and property of every man in the United States; nor can the constitution or laws of any state, in any way prevent or impede the full and complete execution of every power given. The legislative power is competent to lay taxes, duties, imposts, and excises;[3]—there is no limitation to this power, unless it be said that the clause which directs the use to which those taxes, and duties shall be applied, may be said to be a limitation: but this is no restriction of the power

2.9.5

at all, for by this clause they are to be applied to pay the debts and provide for the common defence and general welfare of the United States; but the legislature have authority to contract debts at their discretion; they are the sole judges of what is necessary to provide for the common defence, and they only are to determine what is for the general welfare; this power therefore is neither more nor less, than a power to lay and collect taxes, imposts, and excises, at their pleasure; not only [is] the power to lay taxes unlimited, as to the amount they may require, but it is perfect and absolute to raise them in any mode they please. No state legislature, or any power in the state governments, have any more to do in carrying this into effect, than the authority of one state has to do with that of another. In the business therefore of laying and collecting taxes, the idea of confederation is totally lost, and that of one entire republic is embraced. It is proper here to remark, that the authority to lay and collect taxes is the most important of any power that can be granted; it connects with it almost all other powers, or at least will in process of time draw all other after it; it is the great mean of protection, security, and defence, in a good government, and the great engine of oppression and tyranny in a bad one.[4] This cannot fail of being the case, if we consider the contracted limits which are set by this constitution, to the late [state?] governments, on this article of raising money. No state can emit paper money—lay any duties, or imposts, on imports, or exports, but by consent of the Congress; and then the net produce shall be for the benefit of the United States: the only mean therefore left, for any state to support its government and discharge its debts, is by direct taxation; and the United States have also power to lay and collect taxes, in any way they please. Every one who has thought on the subject, must be convinced that but small sums of money can be collected in any country, by direct taxe[s], when the foederal government begins to exercise the right of taxation in all its parts, the legislatures of the several states will find it impossible to raise monies to support their governments. Without money they cannot be supported, and they must dwindle away, and, as before observed, their powers absorbed in that of the general government.

2.9.6 It might be here shewn, that the power in the federal legislative, to raise and support armies at pleasure, as well in peace as in war, and their controul over the militia, tend, not only to a consolidation of the government, but the destruction of liberty.[5]—I shall not, however, dwell upon these, as a few observations upon the judicial power of this government, in addition to the preceding, will fully evince the truth of the position.

2.9.7 The judicial power of the United States is to be vested in a supreme court, and in such inferior courts as Congress may from time to time ordain and establish.[6] The powers of these courts are very extensive; their jurisdiction comprehends all civil causes, except such as arise between citizens of the same state; and it extends to all cases in law and equity arising under the constitution. One inferior court must be established, I presume, in each

state, at least, with the necessary executive officers appendant thereto. It is easy to see, that in the common course of things, these courts will eclipse the dignity, and take away from the respectability, of the state courts. These courts will be, in themselves, totally independent of the states, deriving their authority from the United States, and receiving from them fixed salaries; and in the course of human events it is to be expected, that they will swallow up all the powers of the courts in the respective states.

2.9.8 How far the clause in the 8th section of the 1st article may operate to do away all idea of confederated states, and to effect an entire consolidation of the whole into one general government, it is impossible to say. The powers given by this article are very general and comprehensive, and it may receive a construction to justify the passing almost any law. A power to make all laws, which shall be *necessary and proper*, for carrying into execution, all powers vested by the constitution in the government of the United States, or any department or officer thereof, is a power very comprehensive and definite [indefinite?], and may, for ought I know, be exercised in a such manner as entirely to abolish the state legislatures.[7] Suppose the legislature of a state should pass a law to raise money to support their government and pay the state debt, may the Congress repeal this law, because it may prevent the collection of a tax which they may think proper and necessary to lay, to provide for the general welfare of the United States? For all laws made, in pursuance of this constitution, are the supreme lay of the land, and the judges in every state shall be bound thereby, any thing in the constitution or laws of the different states to the contrary notwithstanding.—By such a law, the government of a particular state might be overturned at one stroke, and thereby be deprived of every means of its support.

2.9.9 It is not meant, by stating this case, to insinuate that the constitution would warrant a law of this kind; or unnecessarily to alarm the fears of the people, by suggesting, that the federal legislature would be more likely to pass the limits assigned them by the constitution, than that of an individual state, further than they are less responsible to the people. But what is meant is, that the legislature of the United States are vested with the great and uncontroulable powers, of laying and collecting taxes, duties, imposts, and excises; of regulating trade, raising and supporting armies, organizing, arming, and disciplining the militia, instituting courts, and other general powers. And are by this clause invested with the power of making all laws, *proper and necessary*, for carrying all these into execution; and they may so exercise this power as entirely to annihilate all the state governments, and reduce this country to one single government. And if they may do it, it is pretty certain they will; for it will be found that the power retained by individual states, small as it is, will be a clog upon the wheels of the government of the United States; the latter therefore will be naturally inclined to remove it out of the way. Besides, it is a truth confirmed by the unerring experience of ages, that every man, and every body of men, invested with

power, are ever disposed to increase it, and to acquire a superiority over every thing that stands in their way. This disposition, which is implanted in human nature, will operate in the federal legislature to lessen and ultimately to subvert the state authority, and having such advantages, will most certainly succeed, if the federal government succeeds at all. It must be very evident then, that what this constitution wants of being a complete consolidation of the several parts of the union into one complete government, possessed of perfect legislative, judicial, and executive powers, to all intents and purposes, it will necessarily acquire in its exercise and operation.

2.9.10 Let us now proceed to enquire, as I at first proposed, whether it be best the thirteen United States should be reduced to one great republic, or not? It is here taken for granted, that all agree in this, that whatever government we adopt, it ought to be a free one; that it should be so framed as to secure the liberty of the citizens of America, and such an one as to admit of a full, fair, and equal representation of the people. The question then will be, whether a government thus constituted, and founded on such principles, is practicable, and can be exercised over the whole United States, reduced into one state?

2.9.11 If respect is to be paid to the opinion of the greatest and wisest men who have ever thought or wrote on the science of government, we shall be constrained to conclude, that a free republic cannot succeed over a country of such immense extent, containing such a number of inhabitants, and these encreasing in such rapid progression as that of the whole United States. Among the many illustrious authorities which might be produced to this point, I shall content myself with quoting only two. The one is the baron de Montesquieu, spirit of laws, chap. xvi. vol. I [book VIII]. "It is natural to a republic to have only a small territory, otherwise it cannot long subsist. In a large republic there are men of large fortunes, and consequently of less moderation; there are trusts too great to be placed in any single subject; he has interest of his own; he soon begins to think that he may be happy, great and glorious, by oppressing his fellow citizens; and that he may raise himself to grandeur on the ruins of his country. In a large republic, the public good is sacrificed to a thousand views; it is subordinate to exceptions, and depends on accidents. In a small one, the interest of the public is easier perceived, better understood, and more within the reach of every citizen; abuses are of less extent, and of course are less protected."[8] Of the same opinion is the marquis Beccarari.

2.9.12 History furnishes no example of a free republic, any thing like the extent of the United States. The Grecian republics were of small extent; so also was that of the Romans. Both of these, it is true, in process of time, extended their conquests over large territories of country; and the consequence was, that their governments were changed from that of free governments to those of the most tyrannical that ever existed in the world.

2.9.13 Not only the opinion of the greatest men, and the experience of mankind,

are against the idea of an extensive republic, but a variety of reasons may be drawn from the reason and nature of things, against it. In every government, the will of the sovereign is the law. In despotic governments, the supreme authority being lodged in one, his will is law, and can be as easily expressed to a large extensive territory as to a small one. In a pure democracy the people are the sovereign, and their will is declared by themselves; for this purpose they must all come together to deliberate, and decide. This kind of government cannot be exercised, therefore, over a country of any considerable extent; it must be confined to a single city, or at least limited to such bounds as that the people can conveniently assemble, be able to debate, understand the subject submitted to them, and declare their opinion concerning it.

2.9.14 In a free republic, although all laws are derived from the consent of the people, yet the people do not declare their consent by themselves in person, but by representatives, chosen by them, who are supposed to know the minds of their constituents, and to be possessed of integrity to declare this mind.[9]

In every free government, the people must give their assent to the laws by which they are governed. This is the true criterion between a free government and an arbitrary one. The former are ruled by the will of the whole, expressed in any manner they may agree upon; the latter by the will of one, or a few. If the people are to give their assent to the laws, by persons chosen and appointed by them, the manner of the choice and the number chosen, must be such, as to possess, be disposed, and consequently qualified to declare the sentiments of the people; for if they do not know, or are not disposed to speak the sentiments of the people, the people do not govern, but the sovereignty is in a few. Now, in a large extended country, it is impossible to have a representation, possessing the sentiments, and of integrity, to declare the minds of the people, without having it so numerous and unwieldly, as to be subject in great measure to the inconveniency of a democratic government.

2.9.15 The territory of the United States is of vast extent; it now contains near three millions of souls, and is capable of containing much more than ten times that number. Is it practicable for a country, so large and so numerous as they will soon become, to elect a representation, that will speak their sentiments, without their becoming so numerous as to be incapable of transacting public business? It certainly is not.

2.9.16 In a republic, the manners, sentiments, and interests of the people should be similar. If this be not the case, there will be a constant clashing of opinions; and the representatives of one part will be continually striving against those of the other.[10] This will retard the operations of government, and prevent such conclusions as will promote the public good. If we apply this remark to the condition of the United States, we shall be convinced that it forbids that we should be one government. The United States includes a

variety of climates. The productions of the different parts of the union are very variant, and their interests, of consequence, diverse. Their manners and habits differ as much as their climates and productions; and their sentiments are by no means coincident. The laws and customs of the several states are, in many respects, very diverse, and in some opposite; each would be in favor of its own interests and customs, and, of consequence, a legislature, formed of representatives from the respective parts, would not only be too numerous to act with any care or decision, but would be composed of such heterogenous and discordant principles, as would constantly be contending with each other.

2.9.17 The laws cannot be executed in a republic, of an extent equal to that of the United States, with promptitude.

The magistrates in every government must be supported in the execution of the laws, either by an armed force, maintained at the public expence for that purpose; or by the people turning out to aid the magistrate upon his command, in case of resistance.

In despotic governments, as well as in all the monarchies of Europe, standing armies are kept up to execute the commands of the prince or the magistrate, and are employed for this purpose when occasion requires: But they have always proved the destruction of liberty, and [are] abhorrent to the spirit of a free republic. In England, where they depend upon the parliament for their annual support, they have always been complained of as oppressive and unconstitutional, and are seldom employed in executing of the laws; never except on extraordinary occasions, and then under the direction of a civil magistrate.

2.9.18 A free republic will never keep a standing army to execute its laws. It must depend upon the support of its citizens. But when a government is to receive its support from the aid of the citizens, it must be so constructed as to have the confidence, respect, and affection of the people.[11] Men who, upon the call of the magistrate, offer themselves to execute the laws, are influenced to do it either by affection to the government, or from fear; where a standing army is at hand to punish offenders, every man is actuated by the latter principle, and therefore, when the magistrate calls, will obey: but, where this is not the case, the government must rest for its support upon the confidence and respect which the people have for their government and laws. The body of the people being attached, the government will always be sufficient to support and execute its laws, and to operate upon the fears of any faction which may be opposed to it, not only to prevent an opposition to the execution of the laws themselves, but also to compel the most of them to aid the magistrate; but the people will not be likely to have such confidence in their rulers, in a republic so extensive as the United States, as necessary for these purposes. The confidence which the people have in their rulers, in a free republic, arises from their knowing them, from their being responsible to them for their conduct, and from the power they have of displacing them

when they misbehave: but in a republic of the extent of this continent, the people in general would be acquainted with very few of their rulers: the people at large would know little of their proceedings, and it would be extremely difficult to change them. The people in Georgia and New-Hampshire would not know one another's mind, and therefore could not act in concert to enable them to effect a general change of representatives. The different parts of so extensive a country could not possibly be made acquainted with the conduct of their representatives, nor be informed of the reasons upon which measures were founded. The consequence will be, they will have no confidence in their legislature, suspect them of ambitious views, be jealous of every measure they adopt, and will not support the laws they pass.[12] Hence the government will be nerveless and inefficient, and no way will be left to render it otherwise, but by establishing an armed force to execute the laws at the point of the bayonet—a government of all others the most to be dreaded.

2.9.19 In a republic of such vast extent as the United-States, the legislature cannot attend to the various concerns and wants of its different parts. It cannot be sufficiently numerous to be acquainted with the local condition and wants of the different districts, and if it could, it is impossible it should have sufficient time to attend to and provide for all the variety of cases of this nature, that would be continually arising.

2.9.20 In so extensive a republic, the great officers of government would soon become above the controul of the people, and abuse their power to the purpose of aggrandizing themselves, and oppressing them. The trust committed to the executive offices, in a country of the extent of the United-States, must be various and of magnitude. The command of all the troops and navy of the republic, the appointment of officers, the power of pardoning offences, the collecting of all the public revenues, and the power of expending them, with a number of other powers, must be lodged and exercised in every state, in the hands of a few. When these are attended with great honor and emolument, as they always will be in large states, so as greatly to interest men to pursue them, and to be proper objects for ambitious and designing men, such men will be ever restless in their pursuit after them. They will use the power, when they have acquired it, to the purposes of gratifying their own interest and ambition, and it is scarcely possible, in a very large republic, to call them to account for their misconduct, or to prevent their abuse of power.[13]

2.9.21 These are some of the reasons by which it appears, that a free republic cannot long subsist over a country of the great extent of these states. If then this new constitution is calculated to consolidate the thirteen states into one, as it evidently is, it ought not to be adopted.

Though I am of opinion, that it is a sufficient objection to this government, to reject it, that it creates the whole union into one government, under the form of a republic, yet if this objection was obviated, there are exceptions to

it, which are so material and fundamental, that they ought to determine every man, who is a friend to the liberty and happiness of mankind, not to adopt it. I beg the candid and dispassionate attention of my countrymen while I state these objections—they are such as have obtruded themselves upon my mind upon a careful attention to the matter, and such as I sincerely believe are well founded. There are many objections, of small moment, of which I shall take no notice—perfection is not to be expected in any thing that is the production of man—and if I did not in my conscience believe that this scheme was defective in the fundamental principles—in the foundation upon which a free and equal government must rest—I would hold my peace.

Brutus.

II

1 November 1787

To the Citizens of the State of New-York.

2.9.22 I flatter myself that my last address established this position, that to reduce the Thirteen States into one government, would prove the destruction of your liberties.

But lest this truth should be doubted by some, I will now proceed to consider its merits.

2.9.23 Though it should be admitted, that the argument[s] against reducing all the states into one consolidated government, are not sufficient fully to establish this point; yet they will, at least, justify this conclusion, that in forming a constitution for such a country, great care should be taken to limit and definite its powers, adjust its parts, and guard against an abuse of authority. How far attention has been paid to these objects, shall be the subject of future enquiry. When a building is to be erected which is intended to stand for ages, the foundation should be firmly laid. The constitution proposed to your acceptance, is designed not for yourselves alone, but for generations yet unborn. The principles, therefore, upon which the social compact is founded, ought to have been clearly and precisely stated, and the most express and full declaration of rights to have been made—But on this subject there is almost an entire silence.

2.9.24 If we may collect the sentiments of the people of America, from their own most solemn declarations, they hold this truth as self evident, that all men are by nature free. No one man, therefore, or any class of men, have a right, by the law of nature, or of God, to assume or exercise authority over their fellows. The origin of society then is to be sought, not in any natural right which one man has to exercise authority over another, but in the united

consent of those who associate. The mutual wants of men, at first dictated the propriety of forming societies; and when they were established, protection and defence pointed out the necessity of instituting government. In a state of nature every individual pursues his own interest; in this pursuit it frequently happened, that the possessions or enjoyments of one were sacrificed to the views and designs of another; thus the weak were a prey to the strong, the simple and unwary were subject to impositions from those who were more crafty and designing. In this state of things, every individual was insecure; common interest therefore directed, that government should be established, in which the force of the whole community should be collected, and under such directions, as to protect and defend every one who composed it. The common good, therefore, is the end of civil government, and common consent, the foundation on which it is established. To effect this end, it was necessary that a certain portion of natural liberty should be surrendered, in order, that what remained should be preserved: how great a proportion of natural freedom is necessary to be yielded by individuals, when they submit to government, I shall not now enquire. So much, however, must be given up, as will be sufficient to enable those, to whom the administration of the government is committed, to establish laws for the promoting the happiness of the community, and to carry those laws into effect. But it is not necessary, for this purpose, that individuals should relinquish all their natural rights. Some are of such a nature that they cannot be surrendered. Of this kind are the rights of conscience, the right of enjoying and defending life, etc. Others are not necessary to be resigned, in order to attain the end for which government is instituted, these therefore ought not to be given up. To surrender them, would counteract the very end of government, to wit, the common good.[14] From these observations it appears, that in forming a government on its true principles, the foundation should be laid in the manner I before stated, by expressly reserving to the people such of their essential natural rights, as are not necessary to be parted with.[15] The same reasons which at first induced mankind to associate and institute government, will operate to influence them to observe this precaution. If they had been disposed to conform themselves to the rule of immutable righteousness, government would not have been requisite. It was because one part exercised fraud, oppression, and violence on the other, that men came together, and agreed that certain rules should be formed, to regulate the conduct of all, and the power of the whole community lodged in the hands of rulers to enforce an obedience to them. But rulers have the same propensities as other men; they are as likely to use the power with which they are vested for private purposes, and to the injury and oppression of those over whom they are placed, as individuals in a state of nature are to injure and oppress one another. It is therefore as proper that bounds should be set to their authority, as that government should have at first been instituted to restrain private injuries.[16]

2.9.25 This principle, which seems so evidently founded in the reason and nature of things, is confirmed by universal experience. Those who have governed, have been found in all ages ever active to enlarge their powers and abridge the public liberty. This has induced the people in all countries, where any sense of freedom remained, to fix barriers against the encroachments of their rulers. The country from which we have derived our origin, is an eminent example of this. Their magna charta and bill of rights have long been the boast, as well as the security, of that nation. I need say no more, I presume, to an American, than, that this principle is a fundamental one, in all the constitutions of our own states; there is not one of them but what is either founded on a declaration or bill of rights, or has certain express reservation of rights interwoven in the body of them. From this it appears, that at a time when the pulse of liberty beat high and when an appeal was made to the people to form constitutions for the government of themselves, it was their universal sense, that such declarations should make a part of their frames of government. It is therefore the more astonishing, that this grand security, to the rights of the people, is not to be found in this constitution.

2.9.26 It has been said, in answer to this objection, that such declaration[s] of rights, however requisite they might be in the constitutions of the states, are not necessary in the general constitution, because, "in the former case, every thing which is not reserved is given, but in the latter the reverse of the proposition prevails, and every thing which is not given is reserved."[17] It requires but little attention to discover, that this mode of reasoning is rather specious than solid. The powers, rights, and authority, granted to the general government by this constitution, are as complete, with respect to every object to which they extend, as that of any state government—It reaches to every thing which concerns human happiness—Life, liberty, and property, are under its controul. There is the same reason, therefore, that the exercise of power, in this case, should be restrained within proper limits, as in that of the state governments. To set this matter in a clear light, permit me to instance some of the articles of the bills of rights of the individual states, and apply them to the case in question.[18]

2.9.27 For the security of life, in criminal prosecutions, the bills of rights of most of the states have declared, that no man shall be held to answer for a crime until he is made fully acquainted with the charge brought against him; he shall not be compelled to accuse, or furnish evidence against himself—The witnesses against him shall be brought face to face, and he shall be fully heard by himself or counsel. That it is essential to the security of life and liberty, that trial of facts be in the vicinity where they happen. Are not provisions of this kind as necessary in the general government, as in that of a particular state? The powers vested in the new Congress extend in many cases to life; they are authorised to provide for the punishment of a variety of capital crimes, and no restraint is laid upon them in its exercise, save

only, that "the trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be in the state where the said crimes shall have been committed." No man is secure of a trial in the county where he is charged to have committed a crime; he may be brought from Niagara to New-York, or carried from Kentucky to Richmond for trial for an offence, supposed to be committed. What security is there, that a man shall be furnished with a full and plain description of the charges against him? That he shall be allowed to produce all proof he can in his favor? That he shall see the witnesses against him face to face, or that he shall be fully heard in his own defence by himself or counsel?

2.9.28 For the security of liberty it has been declared, "that excessive bail should not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted—That all warrants, without oath or affirmation, to search suspected places, or seize any person, his papers or property, are grievous and oppressive."[19]

These provisions are as necessary under the general government as under that of the individual states; for the power of the former is as complete to the purpose of requiring bail, imposing fines, inflicting punishments, granting search warrants, and seizing persons, papers, or property, in certain cases, as the other.

2.9.29 For the purpose of securing the property of the citizens, it is declared by all the states, "that in all controversies at law, respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and ought to remain sacred and inviolable."[20]

Does not the same necessity exist of reserving this right, under this national compact, as in that of these states? Yet nothing is said respecting it. In the bills of rights of the states it is declared, that a well regulated militia is the proper and natural defence of a free government—That as standing armies in time of peace are dangerous, they are not to be kept up, and that the military should be kept under strict subordination to, and controuled by the civil power.[21]

The same security is as necessary in this constitution, and much more so; for the general government will have the sole power to raise and to pay armies, and are under no controul in the exercise of it; yet nothing of this is to be found in this new system.

2.9.30 I might proceed to instance a number of other rights, which were as necessary to be reserved, such as, that elections should be free, that the liberty of the press should be held sacred; but the instances adduced, are sufficient to prove, that this argument is without foundation.—Besides, it is evident, that the reason here assigned was not the true one, why the framers of this constitution omitted a bill of rights; if it had been, they would not have made certain reservations, while they totally omitted others of more importance. We find they have, in the 9th section of the 1st article, declared, that the writ of habeas corpus shall not be suspended, unless in cases of

rebellion—that no bill of attainder, or expost facto law, shall be passed—that no title of nobility shall be granted by the United States, &c. If every thing which is not given is reserved, what propriety is there in these exceptions?[22] Does this constitution any where grant the power of suspending the habeas corpus, to make expost facto laws, pass bills of attainder, or grant titles of nobility? It certainly does not in express terms. The only answer that can be given is, that these are implied in the general powers granted. With equal truth it may be said, that all the powers, which the bills of right, guard against the abuse of, are contained or implied in the general ones granted by this constitution.

2.9.31 So far it is from being true, that a bill of rights is less necessary in the general constitution than in those of the states, the contrary is evidently the fact.—This system, if it is possible for the people of America to accede to it, will be an original compact; and being the last, will, in the nature of things, vacate every former agreement inconsistent with it. For it being a plan of government received and ratified by the whole people, all other forms, which are in existence at the time of its adoption, must yield to it. This is expressed in positive and unequivocal terms, in the 6th article, "That this constitution and the laws of the United States, which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the *constitution*, or laws of any state, *to the contrary* notwithstanding.

"The senators and representatives before-mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States, and of the several states, shall be bound, by oath or affirmation, to support this constitution."

2.9.32 It is therefore not only necessarily implied thereby, but positively expressed, that the different state constitutions are repealed and entirely done away, so far as they are inconsistent with this, with the laws which shall be made in pursuance thereof, or with treaties made, or which shall be made, under the authority of the United States; of what avail will the constitutions of the respective states be to preserve the rights of its citizens? should they be plead, the answer would be, the constitution of the United States, and the laws made in pursuance thereof, is the supreme law, and all legislatures and judicial officers, whether of the general or state governments, are bound by oath to support it. No priviledge, reserved by the bills of rights, or secured by the state government, can limit the power granted by this, or restrain any laws made in pursuance of it. It stands therefore on its own bottom, and must receive a construction by itself without any reference to any other[23]—And hence it was of the highest importance, that the most precise and express declarations and reservations of rights should have been made.

2.9.33 This will appear the more necessary, when it is considered, that not only the constitution and laws made in pursuance thereof, but all treaties made,

or which shall be made, under the authority of the United States, are the supreme law of the land, and supersede the constitutions of all the states. The power to make treaties, is vested in the president, by and with the advice and consent of two thirds of the senate. I do not find any limitation, or restriction, to the exercise of this power. The most important article in any constitution may therefore be repealed, even without a legislative act. Ought not a government, vested with such extensive and indefinite authority, to have been restricted by a declaration of rights? It certainly ought.

So clear a point is this, that I cannot help suspecting, that persons who attempt to persuade people, that such reservations were less necessary under this constitution than under those of the states, are wilfully endeavouring to deceive, and to lead you into an absolute state of vassalage.

Brutus.

III

15 November 1787

To the Citizens of the State of New-York.

In the investigation of the constitution, under your consideration, great care should be taken, that you do not form your opinions respecting it, from unimportant provisions, or fallacious appearances. 2.9.34

On a careful examination, you will find, that many of its parts, of little moment, are well formed; in these it has a specious resemblance of a free government—but this is not sufficient to justify the adoption of it—the gilded pill, is often found to contain the most deadly poison.

You are not however to expect, a perfect form of government, any more than to meet with perfection in man; your views therefore, ought to be directed to the main pillars upon which a free government is to rest; if these are well placed, on a foundation that will support the superstructure, you should be satisfied, although the building may want a number of ornaments, which, if your particular tastes were gratified, you would have added to it: on the other hand, if the foundation is insecurely laid, and the main supports are wanting, or not properly fixed, however the fabric may be decorated and adorned, you ought to reject it. 2.9.35

Under these impressions, it has been my object to turn your attention to the principal defects in this system. 2.9.36

I have attempted to shew, that a consolidation of this extensive continent, under one government, for internal, as well as external purposes, which is evidently the tendency of this constitution, cannot succeed, without a sacrifice of your liberties; and therefore that the attempt is not only pre-

posterous, but extremely dangerous; and I have shewn, independent of this, that the plan is radically defective in a fundamental principle, which ought to be found in every free government; to wit, a declaration of rights.

2.9.37 I shall now proceed to take a nearer view of this system, to examine its parts more minutely, and shew that the powers are not properly deposited, for the security of public liberty.

The first important object that presents itself in the organization of this government, is the legislature. This is to be composed of two branches; the first to be called the general assembly, and is to be chosen by the people of the respective states, in proportion to the number of their inhabitants, and is to consist of sixty five members, with powers in the legislature to encrease the number, not to exceed one for every thirty thousand inhabitants. The second branch is to be called the senate, and is to consist of twenty-six members, two of which are to be chosen by the legislatures of each of the states.

2.9.38 In the former of these there is an appearance of justice, in the appointment of its members—but if the clause, which provides for this branch, be stripped of its ambiguity, it will be found that there is really no equality of representation, even in this house.

The words are "representatives and direct taxes, shall be apportioned among the several states, which may be included in this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons."—What a strange and unnecessary accumulation of words are here used to conceal from the public eye, what might have been expressed in the following concise manner. Representatives are to be proportioned among the states respectively, according to the number of freemen and slaves inhabiting them, counting five slaves for three free men.

2.9.39 "In a free state," says the celebrated Montesquieu, "every man, who is supposed to be a free agent, ought to be concerned in his own government, therefore the legislature should reside in the whole body of the people, or their representatives."[24] But it has never been alledged that those who are not free agents, can, upon any rational principle, have any thing to do in government, either by themselves or others. If they have no share in government, why is the number of members in the assembly, to be increased on their account? Is it because in some of the states, a considerable part of the property of the inhabitants consists in a number of their fellow men, who are held in bondage, in defiance of every idea of benevolence, justice, and religion, and contrary to all the principles of liberty, which have been publickly avowed in the late glorious revolution? If this be a just ground for representation, the horses in some of the states, and the oxen in others, ought to be represented—for a great share of property in some of them, consists in these animals; and they have as much controul over their own

actions, as these poor unhappy creatures, who are intended to be described in the above recited clause, by the words, "all other persons." By this mode of apportionment, the representatives of the different parts of the union, will be extremely unequal; in some of the southern states, the slaves are nearly equal in number to the free men; and for all these slaves, they will be entitled to a proportionate share in the legislature—this will give them an unreasonable weight in the government, which can derive no additional strength, protection, nor defence from the slaves, but the contrary. Why then should they be represented? What adds to the evil is, that these states are to be permitted to continue the inhuman traffic of importing slaves, until the year 1808—and for every cargo of these unhappy people, which unfeeling, unprincipled, barbarous, and avaricious wretches, may tear from their country, friends and tender connections, and bring into those states, they are to be rewarded by having an increase of members in the general assembly.

There[25] appears at the first view a manifest inconsistency, in the apportionment of representatives in the senate, uponnthe plan of a consolidated government.[26] On every principle of equity, and propriety, representation in a government should be in exact proportion to the numbers, or the aids afforded by the persons represented. How unreasonable, and unjust then is it, that Delaware should have a representation in the senate, equal to Massachusetts, or Virginia? The latter of which contains ten times her numbers, and is to contribute to the aid of the general government in that proportion? This article of the constitution will appear the more objectionable, if it is considered, that the powers vested in this branch of the legislature are very extensive, and greatly surpass those lodged in the assembly, not only for general purposes, but, in many instances, for the internal police of the states. The other branch of the legislature, in which, if in either, a f[a]int spark of democracy is to be found, should have been properly organized and established—but upon examination you will find, that this branch does not possess the qualities of a just representation, and that there is no kind of security, imperfect as it is, for its remaining in the hands of the people. 2.9.40

It has been observed, that the happiness of society is the end of government—that every free government is founded in compact; and that, because it is impracticable for the whole community to assemble, or when assembled, to deliberate with wisdom, and decide with dispatch, the mode of legislating by representation was devised.[27] 2.9.41

The very term, representative, implies, that the person or body chosen for this purpose, should resemble those who appoint them—a representation of the people of America, if it be a true one, must be like the people. It ought to be so constituted, that a person, who is a stranger to the country, might be able to form a just idea of their character, by knowing that of their representatives. They are the sign—the people are the thing signified. It is absurd to speak of one thing being the representative of another, upon any other 2.9.42

principle. The ground and reason of representation, in a free government, implies the same thing. Society instituted government to promote the happiness of the whole, and this is the great end always in view in the delegation of powers. It must then have been intended, that those who are placed instead of the people, should possess their sentiments and feelings, and be governed by their interests, or, in other words, should bear the strongest resemblance of those in whose room they are substituted. It is obvious, that for an assembly to be a true likeness of the people of any country, they must be considerably numerous.—One man, or a few men, cannot possibly represent the feelings, opinions, and characters of a great multitude. In this respect, the new constitution is radically defective.—The house of assembly, which is intended as a representation of the people of America, will not, nor cannot, in the nature of things, be a proper one—sixty-five men cannot be found in the United States, who hold the sentiments, possess the feelings, or are acqainted with the wants and interests of this vast country. This extensive continent is made up of a number of different classes of people; and to have a proper representation of them, each class ought to have an opportunity of choosing their best informed men for the purpose; but this cannot possibly be the case in so small a number. The state of New-York, on the present apportionment, will send six members to the assembly: I will venture to affirm, that number cannot be found in the state, who will bear a just resemblance to the several classes of people who compose it. In this assembly, the farmer, merchant, mecanick, and other various orders of people, ought to be represented according to their respective weight and numbers; and the representatives ought to be intimately acquainted with the wants, understand the interests of the several orders in the society, and feel a proper sense and becoming zeal to promote their prosperity. I cannot conceive that any six men in this state can be found properly qualified in these respects to discharge such important duties: but supposing it possible to find them, is there the least degree of probability that the choice of the people will fall upon such men? According to the common course of human affairs, the natural aristocracy of the country will be elected.[28] Wealth always creates influence, and this is generally much increased by large family connections: this class in society will for ever have a great number of dependents; besides, they will always favour each other—it is their interest to combine—they will therefore constantly unite their efforts to procure men of their own rank to be elected—they will concenter all their force in every part of the state into one point, and by acting together, will most generally carry their election. It is probable, that but few of the merchants, and those the most opulent and ambitious, will have a representation from their body—few of them are characters sufficiently conspicuous to attract the notice of the electors of the state in so limited a representation. The great body of the yeomen of the country cannot expect any of their order in this assembly—the station will be too elevated for them to aspire to—the

distance between the people and their representatives, will be so very great, that there is no probability that a farmer, however respectable, will be chosen—the mechanicks of every branch, must expect to be excluded from a seat in this Body—It will and must be esteemed a station too high and exalted to be filled by any but the first men in the state, in point of fortune; so that in reality there will be no part of the people represented, but the rich, even in that branch of the legislature, which is called the democratic.—The well born, and highest orders in life, as they term themselves, will be ignorant of the sentiments of the midling class of citizens, strangers to their ability, wants, and difficulties, and void of sympathy, and fellow feeling. This branch of the legislature will not only be an imperfect representation, but there will be no security in so small a body, against bribery, and corruption—It will consist at first, of sixty-five, and can never exceed one for every thirty thousand inhabitants; a majority of these, that is, thirty-three, are a quorum, and a majority of which, or seventeen, may pass any law—so that twenty-five men, will have the power to give away all the property of the citizens of these states—what security therefore can there be for the people, where their liberties and property are at the disposal of so few men? It will literally be a government in the hands of the few to oppress and plunder the many. You may conclude with a great degree of certainty, that it, like all others of a similar nature, will be managed by influence and corruption, and that the period is not far distant, when this will be the case, if it should be adopted; for even now there are some among us, whose characters stand high in the public estimation, and who have had a principal agency in framing this constitution, who do not scruple to say, that this is the only practicable mode of governing a people, who think with that degree of freedom which the Americans do[29]—this government will have in their gift a vast number of offices of great honor and emolument. The members of the legislature are not excluded from appointments; and twenty-five of them, as the case may be, being secured, any measure may be carried.

2.9.43 The rulers of this country must be composed of very different materials from those of any other, of which history gives us any account, if the majority of the legislature are not, before many years, entirely at the devotion of the executive—and these states will soon be under the absolute domination of one, or a few, with the fallacious appearance of being governed by men of their own election.

2.9.44 The more I reflect on this subject, the more firmly am I persuaded, that the representation is merely nominal—a mere burlesque; and that no security is provided against corruption and undue influence. No free people on earth, who have elected persons to legislate for them, ever reposed that confidence in so small a number. The British house of commons consists of five hundred and fifty-eight members; the number of inhabitants in Great-Britain, is computed at eight millions—this gives one member for a little more than fourteen thousand, which exceeds double the proportion this

country can ever have: and yet we require a larger representation in proportion to our numbers, than Great-Britain, because this country is much more extensive, and differs more in its productions, interests, manners, and habits. The democratic branch of the legislatures of the several states in the union consists, I believe at present, of near two thousand: and this number was not thought too large for the security of liberty by the framers of our state constitutions: some of the states may have erred in this respect, but the difference between two thousand, and sixty-five, is so very great, that it will bear no comparison.

Other objections offer themselves against this part of the constitution—I shall reserve them for a future paper,[30] when I shall shew, defective as this representation is, no security is provided, that even this shadow of the right, will remain with the people.

Brutus.

IV

29 November 1787

To the People of the State of New-York.

2.9.45 There can be no free government where the people are not possessed of the power of making the laws by which they are governed, either in their own persons, or by others substituted in their stead.

Experience has taught mankind, that legislation by representatives is the most eligible, and the only practicable mode in which the people of any country can exercise this right, either prudently or beneficially. But then, it is a matter of the highest importance, in forming this representation, that it be so constituted as to be capable of understanding the true interests of the society for which it acts, and so disposed as to pursue the good and happiness of the people as its ultimate end. The object of every free government is the public good, and all lesser interests yield to it. That of every tyrannical government, is the happiness and aggrandisement of one, or a few, and to this the public felicity, and every other interest must submit.[31]—The reason of this difference in these governments is obvious. The first is so constituted as to collect the views and wishes of the whole people in that of their rulers, while the latter is so framed as to separate the interests of the governors from that of the governed. The principle of self love, therefore, that will influence the one to promote the good of the whole, will prompt the other to follow its own private advantage. The great art, therefore, in forming a good constitution, appears to be this, so to frame it, as that those to whom the

power is committed shall be subject to the same feelings, and aim at the same objects as the people do, who transfer to them their authority. There is no possible way to effect this but by an equal, full and fair representation: this, therefore, is the great desideratum in politics. However fair an appearance any government may make, though it may possess a thousand plausible articles and be decorated with ever so many ornaments, yet if it is deficient in this essential principle of a full and just representation of the people, it will be only like a painted sepulcher—For, without this it cannot be a free government; let the administration of it be good or ill, it still will be a government, not according to the will of the people, but according to the will of a few.

To test this new constitution then, by this principle, is of the last importance—It is to bring it to the touch-stone of national liberty, and I hope I shall be excused, if, in this paper, I pursue the subject commenced in my last number, to wit, the necessity of an equal and full representation in the legislature.—In that, I showed that it was not equal, because the smallest states are to send the same number of members to the senate as the largest, and, because the slaves, who afford neither aid or defence to the government, are to encrease the proportion of members. To prove that it was not a just or adequate representation, it was urged, that so small a number could not resemble the people, or possess their sentiments and dispositions. That the choice of members would commonly fall upon the rich and great, while the middling class of the community would be excluded. That in so small a representation there was no security against bribery and corruption. 2.9.46

The small number which is to compose this legislature, will not only expose it to the danger of that kind of corruption, and undue influence, which will arise from the gift of places of honor and emolument, or the more direct one of bribery, but it will also subject it to another kind of influence no less fatal to the liberties of the people, though it be not so flagrantly repugnant to the principles of rectitude. It is not to be expected that a legislature will be found in any country that will not have some of its members, who will pursue their private ends, and for which they will sacrifice the public good. Men of this character are, generally, artful and designing, and frequently possess brilliant talents and abilities; they commonly act in concert, and agree to share the spoils of their country among them; they will keep their object ever in view, and follow it with constancy. To effect their purpose, they will assume any shape, and, Proteus like, mould themselves into any form—where they find members proof against direct bribery or gifts of offices, they will endeavor to mislead their minds by specious and false reasoning, to impose upon their unsuspecting honesty by an affectation of zeal for the public good; they will form juntos, and hold out-door meetings; they will operate upon the good nature of their opponents, by a thousand little attentions, and teize them into compliance by the earnestness of so- 2.9.47

licitation. Those who are acquainted with the manner of conducting business in public assemblies, know how prevalent art and address are in carrying a measure, even over men of the best intentions, and of good understanding. The firmest security against this kind of improper and dangerous influence, as well as all other, is a strong and numerous representation: in such a house of assembly, so great a number must be gained over, before the private views of individuals could be gratified that there could be scarce a hope of success. But in the foederal assembly, seventeen men are all that is necessary to pass a law. It is probable, it will seldom happen that more than twenty-five will be requisite to form a majority, when it is considered what a number of places of honor and emolument will be in the gift of the executive, the powerful influence that great and designing men have over the honest and unsuspecting, by their art and address, their soothing manners and civilities, and their cringing flattery, joined with their affected patriotism; when these different species of influence are combined, it is scarcely to be hoped that a legislature, composed of so small a number, as the one proposed by the new constitution, will long resist their force.

2.9.48 A[32] farther objection against the feebleness of the representation is, that it will not possess the confidence of the people. The execution of the laws in a free government must rest on this confidence, and this must be founded on the good opinion they entertain of the framers of the laws. Every government must be supported, either by the people having such an attachment to it, as to be ready, when called upon, to support it, or by a force at the command of the government, to compel obedience. The latter mode destroys every idea of a free government; for the same force that may be employed to compel obedience to good laws, might, and probably would be used to wrest from the people their constitutional liberties.—Whether it is practicable to have a representation for the whole union sufficiently numerous to obtain that confidence which is necessary for the purpose of internal taxation, and other powers to which this proposed government extends, is an important question. I am clearly of opinion, it is not, and therefore I have stated this in my first number, as one of the reasons against going into an entire consolidation[33] of the states—one of the most capital errors in the system, is that of extending the powers of the foederal government to objects to which it is not adequate, which it cannot exercise without endangering public liberty, and which it is not necessary they should possess, in order to preserve the union and manage our national concerns; of this, however, I shall treat more fully in some future paper[34]—But, however this may be, certain it is, that the representation in the legislature is not so formed as to give reasonable ground for public trust.

2.9.49 In order for the people safely to repose themselves on their rulers, they should not only be of their own choice. But it is requisite they should be acquainted with their abilities to manage the public concerns with wisdom. They should be satisfied that those who represent them are men of integrity,

who will pursue the good of the community with fidelity; and will not be turned aside from their duty by private interest, or corrupted by undue influence; and that they will have such a zeal for the good of those whom they represent, as to excite them to be diligent in their service; but it is impossible the people of the United States should have sufficient knowledge of their representatives, when the numbers are so few, to acquire any rational satisfaction on either of these points. The people of this state will have very little acquaintance with those who may be chosen to represent them; a great part of them will, probably, not know the characters of their own members, much less that of a majority of those who will compose the foederal assembly; they will consist of men, whose names they have never heard, and whose talents and regard for the public good, they are total strangers to;[35] and they will have no persons so immediately of their choice so near them, of their neighbours and of their own rank in life, that they can feel themselves secure in trusting their interests in their hands. The representatives of the people cannot, as they now do, after they have passed laws, mix with the people, and explain to them the motives which induced the adoption of any measure, point out its utility, and remove objections or silence unreasonable clamours against it.—The number will be so small that but a very few of the most sensible and respectable yeomanry of the country can ever have any knowledge of them: being so far removed from the people, their station will be elevated and important, and they will be considered as ambitious and designing. They will not be viewed by the people as part of themselves, but as a body distinct from them, and having separate interests to pursue; the consequence will be, that a perpetual jealousy will exist in the minds of the people against them; their conduct will be narrowly watched; their measures scrutinized; and their laws opposed, evaded, or reluctantly obeyed. This is natural, and exactly corresponds with the conduct of individuals towards those in whose hands they intrust important concerns. If the person confided in, be a neighbour with whom his employer is intimately acquainted, whose talents, he knows, are sufficient to manage the business with which he is charged, his honesty and fidelity unsuspected, and his friendship and zeal for the service of this principal unquestionable, he will commit his affairs into his hands with unreserved confidence, and feel himself secure; all the transactions of the agent will meet with the most favorable construction, and the measures he takes will give satisfaction. But, if the person employed be a stranger, whom he has never seen, and whose character for ability or fidelity he cannot fully learn—If he is constrained to choose him, because it was not in his power to procure one more agreeable to his wishes, he will trust him with caution, and be suspicious of all his conduct.

If then this government should not derive support from the good will of the people, it must be executed by force, or not executed at all; either case would lead to the total destruction of liberty.—The convention seemed 2.9.50

aware of this, and have therefore provided for calling out the militia to execute the laws of the union. If this system was so framed as to command that respect from the people, which every good free government will obtain, this provision was unnecessary—the people would support the civil magistrate.[36] This power is a novel one, in free governments—these have depended for the execution of the laws on the Posse Comitatus, and never raised an idea, that the people would refuse to aid the civil magistrate in executing those laws they themselves had made. I shall now dismiss the subject of the incompetency of the representation, and proceed, as I promised, to shew, that, impotent as it is, the people have no security that they will enjoy the exercise of the right of electing this assembly, which, at best, can be considered but as the shadow of representation.

2.9.51 By section 4, article I, the Congress are authorized, at any time, by law, to make, or alter, regulations respecting the time, place, and manner of holding elections for senators and representatives, except as to the places of choosing senators. By this clause the right of election itself, is, in a great measure, transferred from the people to their rulers.—One would think, that if any thing was necessary to be made a fundamental article of the original compact, it would be, that of fixing the branches of the legislature, so as to put it out of its power to alter itself by modifying the election of its own members at will and pleasure. When a people once resign the privilege of a fair election, they clearly have none left worth contending for.

2.9.52 It is clear that, under this article, the foederal legislature may institute such rules respecting elections as to lead to the choice of one description of men. The weakness of the representation, tends but too certainly to confer on the rich and *well-born*, all honours; but the power granted in this article, may be so exercised, as to secure it almost beyond a possibility of controul. The proposed Congress may make the whole state one district, and direct, that the capital (the city of New-York, for instance) shall be the place for holding the election; the consequence would be, that none but men of the most elevated rank in society would attend, and they would as certainly choose men of their own class; as it is true what the *Apostle Paul* saith, that "no man ever yet hated his own flesh, but nourisheth and cherisheth it."[37]—They may declare that those members who have the greatest number of votes, shall be considered as duly elected; the consequence would be that the people, who are dispersed in the interior parts of the state, would give their votes for a variety of candidates, while any order, or profession, residing in populous places, by uniting their interests, might procure whom they pleased to be chosen—and by this means the representatives of the state may be elected by one tenth part of the people who actually vote. This may be effected constitutionally, and by one of those silent operations which frequently takes place without being noticed, but which often produces such changes as entirely to alter a government, subvert a free constitution, and rivet the chains on a free people before they

perceive they are forged. Had the power of regulating elections been left under the direction of the state legislatures, where the people are not only nominally but substantially represented, it would have been secure; but if it was taken out of their hands, it surely ought to have been fixed on such a basis as to have put it out of the power of the foederal legislature to deprive the people of it by law. Provision should have been made for marking out the states into districts, and for choosing, by a majority of votes, a person out of each of them of permanent property and residence in the district which he was to represent.

2.9.53 If the people of America will submit to a constitution that will vest in the hands of any body of men a right to deprive them by law of the privilege of a fair election, they will submit to almost any thing. Reasoning with them will be in vain, they must be left until they are brought to reflection by feeling oppression—they will then have to wrest from their oppressors, by a strong hand, that which they now possess, and which they may retain if they will exercise but a moderate share of prudence and firmness.

2.9.54 I know it is said that the dangers apprehended from this clause are merely imaginary, that the proposed general legislature will be disposed to regulate elections upon proper principles, and to use their power with discretion, and to promote the public good. On this, I would observe, that constitutions are not so necessary to regulate the conduct of good rulers as to restrain that of bad ones.—Wise and good men will exercise power so as to promote the public happiness under any form of government. If we are to take it for granted, that those who administer the government under this system, will always pay proper attention to the rights and interests of the people, nothing more was necessary than to say who should be invested with the powers of government, and leave them to exercise it at will and pleasure. Men are apt to be deceived both with respect to their own dispositions and those of others. Though this truth is proved by almost every page of the history of nations, to wit, that power, lodged in the hands of rulers to be used at discretion, is almost always exercised to the oppression of the people, and the aggrandizement of themselves; yet most men think if it was lodged in their hands they would not employ it in this manner.—Thus when the prophet *Elisha* told *Hazael*, "I know the evil that thou wilt do unto the children of Israel; their strong holds wilt thou set on fire, and their young men, wilt thou slay with the sword, and wilt dash their children, and rip up their women with child." Hazael had no idea that he ever should be guilty of such horrid cruelty, and said to the prophet, "Is thy servant a dog that he should do this great thing." Elisha answered, "The Lord hath shewed me that thou shalt be king of Syria."[38] The event proved, that Hazael only wanted an opportunity to perpetrate these enormities without restraint, and he had a disposition to do them, though he himself knew it not.

Brutus.

V

13 December 1787

To the People of the State of New-York.

2.9.55 It was intended in this Number to have prosecuted the enquiry into the organization of this new system: particularly to have considered the dangerous and premature union of the President and Senate, and the mixture of legislative, executive, and judicial powers in the Senate.

But there is such an intimate connection between the several branches in whom the different species of authority is lodged, and the powers with which they are invested, that on reflection it seems necessary first to proceed to examine the nature and extent of the powers granted to the legislature.

2.9.56 This enquiry will assist us the better to determine, whether the legislature is so constituted, as to provide proper checks and restrictions for the security of our rights, and to guard against the abuse of power—For the means should be suited to the end; a government should be framed with a view to the objects to which it extends: if these be few in number, and of such a nature as to give but small occasion or opportunity to work oppression in the exercise of authority, there will be less need of a numerous representation, and special guards against abuse, than if the powers of the government are very extensive, and include a great variety of cases.[39] It will also be found necessary to examine the extent of these powers, in order to form a just opinion how far this system can be considered as a confederation, or a consolidation of the states. Many of the advocates for, and most of the opponents to this system, agree that the form of government most suitable for the United States, is that of a confederation.[40] The idea of a confederated government is that of a number of independent states entering into a compact, for the conducting certain general concerns, in which they have a common interest, leaving the management of their internal and local affairs to their separate governments. But whether the system proposed is of this nature cannot be determined without a strict enquiry into the powers proposed to be granted.

2.9.57 This constitution considers the people of the several states as one body corporate, and is intended as an original compact, it will therefore dissolve all contracts which may be inconsistent with it. This not only results from its nature, but is expressly declared in the *6th article* of it. The design of the constitution is expressed in the preamble, to be, "in order to form a more perfect union, to establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and posterity." These are the ends this government is to accomplish, and for which it is invested with certain powers, among these

is the power "to make all laws which are *necessary and proper* for carrying into execution the foregoing powers, and *all other* powers vested by this constitution in the government of the United States, or in any department or officer thereof." It is a rule in construing a law to consider the objects the legislature had in view in passing it, and to give it such an explanation as to promote their intention. The same rule will apply in explaining a constitution. The great objects then are declared in this preamble in general and indefinite terms to be to provide for the common defence, promote the general welfare, and an express power being vested in the legislature to make all laws which shall be necessary and proper for carrying into execution all the powers vested in the general government. The inference is natural that the legislature will have an authority to make all laws which they shall judge necessary for the common safety, and to promote the general welfare. This amounts to a power to make laws at discretion: No terms can be found more indefinite than these, and it is obvious, that the legislature alone must judge what laws are proper and necessary for the purpose. It may be said, that this way of explaining the constitution, is torturing and making it speak what it never intended. This is far from my intention, and I shall not even insist upon this implied power, but join issue with those who say we are to collect the idea of the powers given from the express words of the clauses granting them; and it will not be difficult to shew that the same authority is expressly given which is supposed to be implied in the forgoing paragraphs.

In the 1st article, 8th section, it is declared, "that Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts, and provide for the common defence, and general welfare of the United States." In the preamble, the intent of the constitution, among other things, is declared to be to provide for the common defence, and promote the general welfare, and in this clause the power is in express words given to Congress "to provide for the common defence, and general welfare."—And in the last paragraph of the same section there is an express authority to make all laws which shall be necessary and proper for carrying into execution this power. It is therefore evident, that the legislature under this constitution may pass any law which they may think proper. It is true the 9th section restrains their power with respect to certain objects. But these restrictions are very limited, some of them improper, some unimportant, and others not easily understood, as I shall hereafter shew. It has been urged that the meaning I give to this part of the constitution is not the true one, that the intent of it is to confer on the legislature the power to lay and collect taxes, etc. in order to provide for the common defence and general welfare.[41] To this I would reply, that the meaning and intent of the constitution is to be collected from the words of it, and I submit to the public, whether the construction I have given it is not the most natural and easy. But admitting the contrary opinion to prevail, I shall nevertheless, be able to shew,

2.9.58

that the same powers are substantially vested in the general government, by several other articles in the constitution. It invests the legislature with authority to lay and collect taxes, duties, imposts and excises, in order to provide for the common defence, and promote the general welfare, and to pass all laws which shall be necessary and proper for carrying this power into effect. To comprehend the extent of this authority, it will be requisite to examine 1st. what is included in this power to lay and collect taxes, duties, imposts and excises.

2d. What is implied in the authority, to pass all laws which shall be necessary and proper for carrying this power into execution.

3d. What limitation, if any, is set to the exercise of this power by the constitution.

2.9.59 1st. To detail the particulars comprehended in the general terms, taxes, duties, imposts and excises, would require a volume, instead of a single piece in a news-paper. Indeed it would be a task far beyond my ability, and to which no one can be competent, unless possessed of a mind capable of comprehending every possible source of revenue; for they extend to every possible way of raising money, whether by direct or indirect taxation. Under this clause may be imposed a poll-tax, a land-tax, a tax on houses and buildings, on windows and fire places, on cattle and on all kinds of personal property:—It extends to duties on all kinds of goods to any amount, to tonnage and poundage on vessels, to duties on written instruments, newspapers, almanacks, and books:—It comprehends an excise on all kinds of liquors, spirits, wines, cyder, beer, etc. and indeed takes in duty or excise on every necessary or conveniency of life; whether of foreign or home growth or manufactory. In short, we can have no conception of any way in which a government can raise money from the people, but what is included in one or other of three general terms. We may say then that this clause commits to the hands of the general legislature every conceivable source of revenue within the United States. Not only are these terms very comprehensive, and extend to a vast number of objects, but the power to lay and collect has great latitude: it will lead to the passing a vast number of laws, which may affect the personal rights of the citizens of the states, expose their property to fines and confiscation, and put their lives in jeopardy: it opens a door to the appointment of a swarm of revenue and excise officers to pray [*sic*] upon the honest and industrious part of the community, eat up their substance, and riot on the spoils of the country.

2.9.60 2d. We will next enquire into what is implied in the authority to pass all laws which shall be necessary and proper to carry this power into execution.

It is, perhaps, utterly impossible fully to define this power. The authority granted in the first clause can only be understood in its full extent, by descending to all the particular cases in which a revenue can be raised; the number and variety of these cases are so endless, and as it were infinite, that no man living has, as yet, been able to reckon them up. The greatest

geniuses in the world have been for ages employed in the research, and when mankind had supposed that the subject was exhausted they have been astonished with the refined improvements that have been made in modern times, and especially in the English nation on the subject—If then the objects of this power cannot be comprehended, how is it possible to understand the extent of that power which can pass all laws which shall be necessary and proper for carrying it into execution? It is truly incomprehensible. A case cannot be conceived of, which is not included in this power. It is well known that the subject of revenue is the most difficult and extensive in the science of government. It requires the greatest talents of a statesman, and the most numerous and exact provisions of the legislature. The command of the revenues of a state gives the command of every thing in it.—He that has the purse will have the sword, and they that have both, have every thing; so that the legislature having every source from which money can be drawn under their direction, with a right to make all laws necessary and proper for drawing forth all the resource of the country, would have, in fact, all power.[42]

2.9.61 Were I to enter into the detail, it would be easy to shew how this power in its operation, would totally destroy all the powers of the individual states.[43] But this is not necessary for those who will think for themselves, and it will be useless to such as take things upon trust, nothing will awaken them to reflection, until the iron hand of oppression compel them to it.

2.9.62 I shall only remark, that this power, given to the federal legislature, directly annihilates all the powers of the state legislatures.[44] There cannot be a greater solecism in politics than to talk of power in a government, without the command of any revenue. It is as absurd as to talk of an animal without blood, or the subsistence of one without food.[45] Now the general government having in their controul every possible source of revenue, and authority to pass any law they may deem necessary to draw them forth, or to facilitate their collection; no source of revenue is therefore left in the hands of any state. Should any state attempt to raise money by law, the general government may repeal or arrest it in the execution, for all their laws will be the supreme law of the land: If then any one can be weak enough to believe that a government can exist without having the authority to raise money to pay a door-keeper to their assembly, he may believe that the state government can exist, should this new constitution take place.[46]

2.9.63 It is agreed by most of the advocates of this new system, that the government which is proper for the United States should be a confederated one; that the respective states ought to retain a portion of their sovereignty, and that they should preserve not only the forms of their legislatures, but also the power to conduct certain internal concerns. How far the powers to be retained by the states shall extend, is the question; we need not spend much time on this subject, as it respects this constitution, for a government without the power to raise money is one only in name. It is clear that the

legislatures of the respective states must be altogether dependent on the will of the general legislature, for the means of supporting their government. The legislature of the United States will have a right to exhaust every source of revenue in every state, and to annul all laws of the states which may stand in the way of effecting it; unless therefore we can suppose the state governments can exist without money to support the officers who execute them, we must conclude they will exist no longer than the general legislature choose they should. Indeed the idea of any government existing, in any respect, as an independent one, without any means of support in their own hands, is an absurdity. If therefore, this constitution has in view, what many of its framers and advocates say it has, to secure and guarantee to the separate states the exercise of certain powers of government[,] it certainly ought to have left in their hands some sources of revenue. It should have marked the line in which the general government should have raised money, and set bounds over which they should not pass, leaving to the separate states other means to raise supplies for the support of their governments, and to discharge their respective debts. To this it is objected, that the general government ought to have power competent to the purposes of the union; they are to provide for the common defence, to pay the debts of the United States, support foreign ministers, and the civil establishment of the union, and to do these they ought to have authority to raise money adequate to the purpose. On this I observe, that the state governments have also contracted debts, they require money to support their civil officers, and how this is to be done, if they give to the general government a power to raise money in every way in which it can possibly be raised, with such a controul over the state legislatures as to prohibit them, whenever the general legislature may think proper, from raising any money.[47] It is again objected that it is very difficult, if not impossible, to draw the line of distinction between the powers of the general and state governments on this subject. The first, it is said, must have the power of raising the money necessary for the purposes of the union, if they are limited to certain objects the revenue may fall short of a sufficiency for the public exigencies, they must therefore have discretionary power. The line may be easily and accurately drawn between the powers of the two governments on this head. The distinction between external and internal taxes, is not a novel one in this country, it is a plain one, and easily understood. The first includes impost duties on all imported goods; this species of taxes it is proper should be laid by the general government; many reasons might be urged to shew that no danger is to be apprehended from their exercise of it. They may be collected in few places, and from few hands with certainty and expedition. But few officers are necessary to be imployed in collecting them, and there is no danger of oppression in laying them, because, if they are laid higher than trade will bear, the merchants will cease importing, or smuggle their goods. We have therefore sufficient security, arising from the nature of the thing, against

burdensome and intolerable impositions from this kind of tax.[48] But the case is far otherwise with regard to direct taxes; these include poll taxes, land taxes, excises, duties on written instruments, on every thing we eat, drink, or wear; they take hold of every species of property, and come home to every man's house and packet. These are often so oppressive, as to grind the face of the poor, and render the lives of the common people a burden to them. The great and only security the people can have against oppression from this kind of taxes, must rest in their representatives. If they are sufficiently numerous to be well informed of the circumstances, and ability of those who send them, and have a proper regard for the people, they will be secure. The general legislature, as I have shewn in a former paper, will not be thus qualified, and therefore, on this account, ought not to exercise the power of direct taxation. If the power of laying imposts will not be sufficient, some other specific mode of raising a revenue should have been assigned the general government; many may be suggested in which their power may be accurately defined and limited, and it would be much better to give them authority to lay and collect a duty on exports, not to exceed a certain rate per cent, than to have surrendered every kind of resource that the country has, to the complete abolition of the state governments, and which will introduce such an infinite number of laws and ordinances, fines and penalties, courts, and judges, collectors, and excisemen, that when a man can number them, he may enumerate the stars of Heaven.

I shall resume this subject in my next, and by an induction of particulars shew, that this power, in its exercise, will subvert all state authority, and will work to the oppression of the people, and that there are no restrictions in the constitution that will soften its rigour, but rather the contrary.

Brutus.

VI

27 December 1787

It is an important question, whether the general government of the United States should be so framed, as to absorb and swallow up the state governments? or whether, on the contrary, the former ought not to be confined to certain defined national objects, while the latter should retain all the powers which concern the internal police of the states? 2.9.64

I have, in my former papers, offered a variety of arguments to prove, that a simple free government could not be exercised over this whole continent, and that therefore we must either give up our liberties and submit to an arbitrary one, or frame a constitution on the plan of confederation. Further 2.9.65

reasons might be urged to prove this point—but it seems unnecessary, because the principal advocates of the new constitution admit of the position. The question therefore between us, this being admitted, is, whether or not this system is so formed as either directly to annihilate the state governments, or that in its operation it will certainly effect it. If this is answered in the affirmative, then the system ought not to be adopted, without such amendments as will avoid this consequence. If on the contrary it can be shewn, that the state governments are secured in their rights to manage the internal police of the respective states, we must confine ourselves in our enquiries to the organization of the government and the guards and provisions it contains to prevent a misuse or abuse of power.[49] To determine this question, it is requisite, that we fully investigate the nature, and the extent of the powers intended to be granted by this constitution to the rulers.

2.9.66 In my last number I called your attention to this subject, and proved, as I think, uncontrovertibly, that the powers given the legislature under the 8th section of the 1st article, had no other limitation than the discretion of the Congress. It was shewn, that even if the most favorable construction was given to this paragraph, that the advocates for the new constitution could wish, it will convey a power to lay and collect taxes, imposts, duties, and excises, according to the discretion of the legislature, and to make all laws which they shall judge proper and necessary to carry this power into execution. This I shewed would totally destroy all the power of the state governments. To confirm this, it is worth while to trace the operation of the government in some particular instances.

2.9.67 The general government is to be vested with authority to levy and collect taxes, duties, and excises; the separate states have also power to impose taxes, duties, and excises, except that they cannot lay duties on exports and imports without the consent of Congress. Here then the two governments have concurrent jurisdiction; both may lay impositions of this kind. But then the general government have supperadded to this power, authority to make all laws which shall be necessary and proper for carrying the foregoing power into execution. Suppose then that both governments should lay taxes, duties, and excises, and it should fall so heavy on the people that they would be unable, or be so burdensome that they would refuse to pay them both—would it not be necessary that the general legislature should suspend the collection of the state tax? It certainly would. For, if the people could not, or would not pay both, they must be discharged from the tax to the state, or the tax to the general government could not be collected.—The conclusion therefore is inevitable, that the respective state governments will not have the power to raise one shilling in any way, but by the permission of the Congress. I presume no one will pretend, that the states can exercise legislative authority, or administer justice among their citizens for any length of time, without being able to raise a sufficiency to pay those who administer their governments.

If this be true, and if the states can raise money only by permission of the general government, it follows that the state governments will be dependent on the will of the general government for their existence. 2.9.68

What will render this power in Congress effectual and sure in its operation is, that the government will have complete judicial and executive authority to carry all their laws into effect, which will be paramount to the judicial and executive authority of the individual states: in vain therefore will be all interference of the legislatures, courts, or magistrates of any of the states on the subject: for they will be subordinate to the general government, and engaged by oath to support it, and will be constitutionally bound to submit to their decisions.[50]

The general legislature will be empowered to lay any tax they chuse, to annex any penalties they please to the breach of their revenue laws; and to appoint as many officers as they may think proper to collect the taxes. They will have authority to farm the revenues and to vest the farmer general, with his subalterns, with plenary powers to collect them, in any way which to them may appear eligible. And the courts of law, which they will be authorized to institute, will have cognizance of every case arising under the revenue laws, the conduct of all the officers employed in collecting them; and the officers of these courts will execute their judgments. There is no way, therefore, of avoiding the destruction of the state governments, whenever the Congress please to do it, unless the people rise up, and, with a strong hand, resist and prevent the execution of constitutional laws.[51] The fear of this, will, it is presumed, restrain the general government, for some time, within proper bounds; but it will not be many years before they will have a revenue, and force, at their command, which will place them above any apprehensions on that score. 2.9.69

How far the power to lay and collect duties and excises, may operate to dissolve the state governments, and oppress the people, it is impossible to say. It would assist us much in forming a just opinion on this head, to consider the various objects to which this kind of taxes extend, in European nations, and the infinity of laws they have passed respecting them. Perhaps, if leisure will permit, this may be essayed in some future paper.[52] 2.9.70

It was observed in my last number, that the power to lay and collect duties and excises, would invest the Congress with authority to impose a duty and excise on every necessary and convenience of life. As the principal object of the government, in laying a duty or excise, will be, to raise money, it is obvious, that they will fix on such articles as are of the most general use and consumption; because, unless great quantities of the article, on which the duty is laid, is used, the revenue cannot be considerable. We may therefore presume, that the articles which will be the object of this species of taxes will be either the real necessaries of life; or if not these, such as from custom and habit are esteemed so. I will single out a few of the productions of our own country, which may, and probably will, be of the number. 2.9.71

2.9.72 Cider is an article that most probably will be one of those on which an excise will be laid, because it is one, which this country produces in great abundance, which is in very general use, is consumed in great quantities, and which may be said too not to be a real necessary of life. An excise on this would raise a large sum of money in the United States. How would the power, to lay and collect an excise on cider, and to pass all laws proper and necessary to carry it into execution, operate in its exercise? It might be necessary, in order to collect the excise on cider, to grant to one man, in each county, an exclusive right of building and keeping cider-mills, and oblige him to give bonds and security for payment of the excise; or, if this was not done, it might be necessary to license the mills, which are to make this liquor, and to take from them security, to account for the excise; or, if otherwise, a great number of officers must be employed, to take account of the cider made, and to collect the duties on it.

2.9.73 Porter, ale, and all kinds of malt-liquors, are articles that would probably be subject also to an excise. It would be necessary, in order to collect such an excise, to regulate the manufactory of these, that the quantity made might be ascertained or otherwise security could not be had for the payment of the excise. Every brewery must then be licensed, and officers appointed, to take account of its product, and to secure the payment of the duty, or excise, before it is sold. Many other articles might be named, which would be objects of this species of taxation, but I refrain from enumerating them. It will probably be said, by those who advocate this system, that the observations already made on this head, are calculated only to inflame the minds of the people, with the apprehension of dangers merely imaginary. That there is not the least reason to apprehend, the general legislature will exercise their power in this manner. To this I would only say, that these kinds of taxes exist in Great Britain, and are severely felt. The excise on cider and perry, was imposed in that nation a few years ago, and it is in the memory of every one, who read the history of the transaction, what great tumults it occasioned.

2.9.74 This power, exercised without limitation, will introduce itself into every corner of the city, and country—It will wait upon the ladies at their toilett, and will not leave them in any of their domestic concerns; it will accompany them to the ball, the play, and the assembly; it will go with them when they visit, and will, on all occasions, sit beside them in their carriages, nor will it desert them even at church; it will enter the house of every gentleman, watch over his cellar, wait upon his cook in the kitchen, follow the servants into the parlour, preside over the table, and note down all he eats or drinks; it will attend him to his bed-chamber, and watch him while he sleeps; it will take cognizance of the professional man in his office, or his study; it will watch the merchant in the counting-house, or in his store; it will follow the mechanic to his shop, and in his work, and will haunt him in his family, and in his bed; it will be a constant companion of the industrious farmer in all his

labour, it will be with him in the house, and in the field, observe the toil of his hands, and the sweat of his brow; it will penetrate into the most obscure cottage; and finally, it will light upon the head of every person in the United States. To all these different classes of people, and in all these circumstances, in which it will attend them, the language in which it will address them, will be GIVE! GIVE!

2.9.75 A power that has such latitude, which reaches every person in the community in every conceivable circumstance, and lays hold of every species of property they possess, and which has no bounds set to it, but the discretion of those who exercise it[,] I say, such a power must necessarily, from its very nature, swallow up all the power of the state governments.

2.9.76 I shall add but one other observation on this head, which is this—It appears to me a solecism, for two men, or bodies of men, to have unlimited power respecting the same object. It contradicts the scripture maxim, which saith, "no man can serve two masters,"[53] the one power or the other must prevail, or else they will destroy each other, and neither of them effect their purpose. It may be compared to two mechanic powers, acting upon the same body in opposite directions, the consequence would be, if the powers were equal, the body would remain in a state of rest, or if the force of the one was superior to that of the other, the stronger would prevail, and overcome the resistance of the weaker.

2.9.77 But it is said, by some of the advocates of this system, "That the idea that Congress can levy taxes at pleasure, is false, and the suggestion wholly unsupported: that the preamble to the constitution is declaratory of the purposes of the union, and the assumption of any power not necessary to establish justice, &c. to provide for the common defence, &c. will be unconstitutional. Besides, in the very clause which gives the power of levying duties and taxes, the purposes to which the money shall be appropriated, are specified, viz. to pay the debts, and provide for the common defence and general welfare."* I would ask those, who reason thus, to define what ideas are included under the terms, to provide for the common defence and general welfare? Are these terms definite, and will they be understood in the same manner, and to apply to the same cases by every one? No one will pretend they will. It will then be matter of opinion, what tends to the general welfare; and the Congress will be the only judges in the matter. To provide for the general welfare, is an abstract proposition, which mankind differ in the explanation of, as much as they do on any political or moral proposition that can be proposed; the most opposite measures may be pursued by different parties, and both may profess, that they have in view the general welfare; and both sides may be honest in their professions, or both may have sinister views. Those who advocate this new constitution declare, they

*Vide an examination into the leading principles of the federal constitution, printed in Philadelphia, Page 34.[54]

are influenced by a regard to the general welfare; those who oppose it, declare they are moved by the same principle; and I have no doubt but a number on both sides are honest in their professions; and yet nothing is more certain than this, that to adopt this constitution, and not to adopt it, cannot both of them be promotive of the general welfare.

2.9.78 It is as absurd to say, that the power of Congress is limited by these general expressions, "to provide for the common safety, and general welfare," as it would be to say, that it would be limited, had the constitution said they should have power to lay taxes, &c. at will and pleasure. Were this authority given, it might be said, that under it the legislature could not do injustice, or pursue any measures, but such as were calculated to promote the public good, and happiness. For every man, rulers as well as others, are bound by the immutable laws of God and reason, always to will what is right. It is certainly right and fit, that the governors of every people should provide for the common defence and general welfare; every government, therefore, in the world, even the greatest despot, is limited in the exercise of his power. But however just this reasoning may be, it would be found, in practice, a most pitiful restriction. The government would always say, their measures were designed and calculated to promote the public good; and there being no judge between them and the people, the rulers themselves must, and would always, judge for themselves.

2.9.79 There are others of the favourers of this system, who admit, that the power of the Congress under it, with respect to revenue, will exist without limitation, and contend, that so it ought to be.

It is said, "The power to raise armies, to build and equip fleets, and to provide for their support, ought to exist without limitation, because it is impossible to foresee, or to define, the extent and variety of national exigencies, or the correspondent extent and variety of the means which may be necessary to satisfy them.["]

This, it is said, "is one of those truths which, to correct and unprejudiced minds, carries its own evidence along with it. It rests upon axioms as simple as they are universal: the means ought to be proportioned to the end; the person, from whose agency the attainment of any end is expected, ought to possess the means by which it is to be attained."*

2.9.80 This same writer insinuates, that the opponents to the plan promulgated by the convention, manifests a want of candor, in objecting to the extent of the powers proposed to be vested in this government; because he asserts, with an air of confidence, that the powers ought to be unlimited as to the object to which they extend; and that this position, if not self-evident, is at least clearly demonstrated by the foregoing mode of reasoning. But with submission to this author's better judgment, I humbly conceive his reasoning will appear, upon examination, more specious than solid. The means,

*Vide the Federalist, No. 23.[55]

says the gentleman, ought to be proportioned to the end: admit the proposition to be true it is then necessary to enquire, what is the end of the government of the United States, in order to draw any just conclusions from it. Is this end simply to preserve the general government, and to provide for the common defence and general welfare of the union only? certainly not: for beside this, the state governments are to be supported, and provision made for the managing such of their internal concerns as are allotted to them. It is admitted, "that the circumstances of our country are such, as to demand a compound, instead of a simple, a confederate, instead of a sole government," that the objects of each ought to be pointed out, and that each ought to possess ample authority to execute the powers committed to them.[56] The government then, being complex in its nature, the end it has in view is so also; and it is as necessary, that the state governments should possess the means to attain the ends expected from them, as for the general government. Neither the general government, nor the state governments, ought to be vested with all the powers proper to be exercised for promoting the ends of government. The powers are divided between them—certain ends are to be attained by the one, and other certain ends by the other; and these, taken together, include all the ends of good government. This being the case, the conclusion follows, that each should be furnished with the means, to attain the ends, to which they are designed.

To apply this reasoning to the case of revenue; the general government is charged with the care of providing for the payment of the debts of the United States; supporting the general government, and providing for the defence of the union. To obtain these ends, they should be furnished with means. But does it thence follow, that they should command all the revenues of the United States! Most certainly it does not. For if so, it will follow, that no means will be left to attain other ends, as necessary to the happiness of the country, as those committed to their care. The individual states have debts to discharge; their legislatures and executives are to be supported, and provision is to be made for the administration of justice in the respective states. For these objects the general government has no authority to provide; nor is it proper it should. It is clear then, that the states should have the command of such revenues, as to answer the ends they have to obtain. To say, "that the circumstances that endanger the safety of nations are infinite,"[57] and from hence to infer, that all the sources of revenue in the states should be yielded to the general government, is not conclusive reasoning: for the Congress are authorized only to controul in general concerns, and not regulate local and internal ones; and these are as essentially requisite to be provided for as those. The peace and happiness of a community is as intimately connected with the prudent direction of their domestic affairs, and the due administration of justice among themselves, as with a competent provision for their defence against foreign invaders, and indeed more so. 2.9.81

2.9.82 Upon the whole, I conceive, that there cannot be a clearer position than this, that the state governments ought to have an uncontroulable power to raise a revenue, adequate to the exigencies of their governments; and, I presume, no such power is left them by this constitution.

Brutus.

VII

3 January 1788

2.9.83 The result of our reasoning in the two preceeding numbers is this, that in a confederated government, where the powers are divided between the general and the state government, it is essential to its existence, that the revenues of the country, without which no government can exist, should be divided between them, and so apportioned to each, as to answer their respective exigencies, as far as human wisdom can effect such a division and apportionment.

2.9.84 It has been shewn, that no such allotment is made in this constitution, but that every source of revenue is under the controul of the Congress; it therefore follows, that if this system is intended to be a complex and not a simple, a confederate and not an entire consolidated government, it contains in it the sure seeds of its own dissolution.—One of two things must happen—Either the new constitution will become a mere *nudum pactum*, and all the authority of the rulers under it be cried down, as has happened to the present confederation—Or the authority of the individual states will be totally supplanted, and they will retain the mere form without any of the powers of government.—To one or the other of these issues, I think, this new government, if it is adopted, will advance with great celerity.

2.9.85 It is said, I know, that such a separation of the sources of revenue, cannot be made without endangering the public safety—"unless (says a writer) it can be shewn that the circumstances which may affect the public safety are reducible within certain determinate limits; unless the contrary of this position can be fairly and rationally disputed; it must be admitted as a necessary consequence, that there can be no limitation of that authority which is to provide for the defence and protection of the community, &c."*

2.9.86 The pretended demonstration of this writer will instantly vanish, when it is considered, that the *protection and defence* of the community is not intended to be entrusted *solely* into the hands of the general government, and by his own confession it ought not to be. It is true this system commits to the general government the protection and defence of the community against foreign force and invasion, against piracies and felonies on the high

Federalist, No. 23.

seas, and against insurrections among ourselves. They are also authorised to provide for the administration of justice in certain matters of a general concern, and in some that I think are not so. But it ought to be left to the state governments to provide for the protection and defence of the citizen against the hand of private violence, and the wrongs done or attempted by individuals to each other—Protection and defence against the murderer, the robber, the thief, the cheat, and the unjust person, is to be derived from the respective state governments.—The just way of reasoning therefore on this subject is this, the general government is to provide for the protection and defence of the community against foreign attacks, &c., they therefore ought to have authority sufficient to effect this, so far as is consistent with the providing for our internal protection and defence. The state governments are entrusted with the care of administring justice among its citizens, and the management of other internal concerns, they ought therefore to retain power adequate to the end. The preservation of internal peace and good order, and the due administration of law and justice, ought to be the first care of every government.—The happiness of a people depends infinitely more on this than it does upon all that glory and respect which nations acquire by the most brilliant martial achievements—and I believe history will furnish but few examples of nations who have duly attended to these, who have been subdued by foreign invaders. If a proper respect and submission to the laws prevailed over all orders of men in our country; and if a spirit of public and private justice, oeconomy and industry influenced the people, we need not be under any apprehensions but what they would be ready to repel any invasion that might be made on the country.[58] And more than this, I would not wish from them—A defensive war is the only one I think justifiable[59]—I do not make these observations to prove, that a government ought not to be authorised to provide for the protection and defence of a country against external enemies, but to shew that this is not the most important, much less the only object of their care.[60]

The European governments are almost all of them framed, and administered with a view to arms, and war, as that in which their chief glory consists; they mistake the end of government—it was designed to save men[']s lives, not to destroy them. We ought to furnish the world with an example of a great people, who in their civil institutions hold chiefly in view, the attainment of virtue, and happiness among ourselves. Let the monarchs in Europe, share among them the glory of depopulating countries, and butchering thousands of their innocent citizens, to revenge private quarrels, or to punish an insult offered to a wife, a mistress, or a favorite: I envy them not the honor, and I pray heaven this country may never be ambitious of it.[61] The czar Peter the great, acquired great glory by his arms; but all this was nothing, compared with the true glory which he obtained, by civilizing his rude and barbarous subjects, diffusing among them knowledge, and establishing, and cultivating the arts of life: by the former he desolated 2.9.87

countries, and drenched the earth with human blood: by the latter he softened the ferocious nature of his people, and pointed them to the means of human happiness. The most important end of government then, is the proper direction of its internal policy, and oeconomy; this is the province of the state governments, and it is evident, and is indeed admitted, that these ought to be under their controul. Is it not then preposterous, and in the highest degree absurd, when the state governments are vested with powers so essential to the peace and good order of society, to take from them the means of their own preservation?

2.9.88 The idea, that the powers of congress in respect to revenue ought to be unlimited, "because the circumstances which may affect the public safety are not reducible to certain determinate limits," is novel, as it relates to the government of the united states. The inconveniencies which resulted from the feebleness of the present confederation was discerned, and felt soon after its adoption. It was soon discovered, that a power to require money, without either the authority or means to enforce a collection of it, could not be relied upon either to provide for the common defence, the discharge of the national debt, or for support of government. Congress therefore, so early as February 1781, recommended to the states to invest them with a power to levy an impost of five per cent ad valorem, on all imported goods, as a fund to be appropriated to discharge the debts already contracted, or which should hereafter be contracted for the support of the war, to be continued until the debts should be fully and finally discharged. There is not the most distant idea held out in this act, that an unlimited power to collect taxes, duties and excises was necessary to be vested in the united states, and yet this was a time of the most pressing danger and distress. The idea then was, that if certain definite funds were assigned to the union, which were certain in their natures, productive, and easy of collection, it would enable them to answer their engagements, and provide for their defence, and the impost of five per cent was fixed upon for the purpose.

2.9.89 This same subject was revived in the winter and spring of 1783, and after a long consideration of the subject, and many schemes were proposed; the result was, a recommendation of the revenue system of April 1783; this system does not suggest an idea that it was necessary to grant the United States unlimited authority in matters of revenue. A variety of amendments were proposed to this system, some of which are upon the journals of Congress, but it does not appear that any of them proposed to invest the general government with discretionary power to raise money. On the contrary, all of them limit them to certain definite objects, and fix the bounds over which they could not pass. This recommendation was passed at the conclusion of the war, and was founded on an estimate of the whole national debt. It was computed, that one million and an half of dollars, in addition to the impost, was a sufficient sum to pay the annual interest of the debt, and gradually to abolish the principal.—Events have proved that their estimate

was sufficiently liberal, as the domestic debt appears upon its being adjusted to be less than it was computed, and since this period a considerable portion of the principal of the domestic debt has been discharged by the sale of the western lands. It has been constantly urged by Congress, and by individuals, ever since, until lately, that had this revenue been appropriated by the states, as it was recommended, it would have been adequate to every exigency of the union. Now indeed it is insisted, that all the treasures of the country are to be under the controul of that body, whom we are to appoint to provide for our protection and defence against foreign enemies. The debts of the several states, and the support of the governments of them are to trust to fortune and accident. If the union should not have occasion for all the money they can raise, they will leave a portion for the state, but this must be a matter of mere grace and favor. Doctrines like these would not have been listened to by any state in the union, at a time when we were pressed on every side by a powerful enemy, and were called upon to make greater exertions than we have any reason to expect we shall ever be again. The ability and character of the convention, who framed the proferred constitution, is sounded forth and reiterated by every declaimer and writer in its favor, as a powerful argument to induce its adoption. But are not the patriots who guided our councils in the perilous times of the war, entitled to equal respect. How has it happened, that none of these perceived a truth, which it is pretended is capable of such clear demonstration, that the power to raise a revenue should be deposited in the general government without limitation? Were the men so dull of apprehension, so incapable of reasoning as not to be able to draw the inference?[62] The truth is, no such necessity exists. It is a thing practicable, and by no means so difficult as is pretended, to limit the powers of the general government in respect to revenue, while yet they may retain reasonable means to provide for the common defence.

It is admitted, that human wisdom cannot foresee all the variety of circumstances that may arise to endanger the safety of nations—and it may with equal truth be added, that the power of a nation, exerted with its utmost vigour, may not be equal to repel a force with which it may be assailed, much less may it be able, with its ordinary resources and power, to oppose an extraordinary and unexpected attack;—but yet every nation may form a rational judgment, what force will be competent to protect and defend it, against any enemy with which it is probable it may have to contend. In extraordinary attacks, every country must rely upon the spirit and special exertions of its inhabitants—and these extraordinary efforts will always very much depend upon the happiness and good order the people experience from a wise and prudent administration of their internal government.[63] The states are as capable of making a just estimate on this head, as perhaps any nation in the world.—We have no powerful nation in our neighbourhood; if we are to go to war, it must either be with the Aboriginal natives, or with European nations. The first are so unequal to a contest with this whole

2.9.90

continent, that they are rather to be dreaded for the depredations they may make on our frontiers, than for any impression they will ever be able to make on the body of the country. Some of the European nations, it is true, have provinces bordering upon us, but from these, unsupported by their European forces, we have nothing to apprehend; if any of them should attack us, they will have to transport their armies across the atlantic, at immense expence, while we should defend ourselves in our own country, which abounds with every necessary of life. For defence against any assault, which there is any probability will be made upon us, we may easily form an estimate.

2.9.91 I may be asked to point out the sources, from which the general government could derive a sufficient revenue, to answer the demands of the union. Many might be suggested, and for my part, I am not disposed to be tenacious of my own opinion on the subject. If the object be defined with precision, and will operate to make the burden fall any thing nearly equal on the different parts of the union, I shall be satisfied.

2.9.92 There is one source of revenue, which it is agreed, the general government ought to have the sole controul of. This is an impost upon all goods imported from foreign countries. This would, of itself, be very productive, and would be collected with ease and certainty.—It will be a fund too, constantly encreasing—for our commerce will grow, with the productions of the country; and these, together with our consumption of foreign goods, will encrease with our population.[64] It is said, that the impost will not produce a sufficient sum to satisfy the demands of the general government; perhaps it would not. Let some other then, equally well defined, be assigned them:—that this is practicable is certain, because such particular objects were proposed by some members of Congress when the revenue system of April 1783, was agitated in that body. It was then moved, that a tax at the rate of ninetieths[65] of a dollar on surveyed land, and a house tax of half a dollar on a house, should be granted to the United States. I do not mention this, because I approve of raising a revenue in this mode. I believe such a tax would be difficult in its collection, and inconvenient in its operation. But it shews, that it has heretofore been the sense of some of those, who now contend, that the general government should have unlimited authority in matters of revenue, that their authority should be definite and limitted on that head.—My own opinion is, that the objects from which the general government should have authority to raise a revenue, should be of such a nature, that the tax should be raised by simple laws, with few officers, with certainty and expedition, and with the least interference with the internal police of the states.—Of this nature is the impost on imported goods—and it appears to me that a duty on exports, would also be of this nature—and therefore, for ought I can discover, this would be the best source of revenue to grant the general government. I know neither the Congress nor the state legislatures will have authority under the new constitution to raise a revenue

in this way. But I cannot perceive the reason of the restriction. It appears to me evident, that a tax on articles exported, would be as nearly equal as any that we can expect to lay, and it certainly would be collected with more ease and less expence than any direct tax. I do not however, contend for this mode, it may be liable to well founded objections that have not occurred to me. But this I do contend for, that some mode is practicable, and that limits must be marked between the general government, and the states on this head, or if they be not, either the Congress in the exercise of this power, will deprive the state legislatures of the means of their existence, or the states by resisting the constitutional authority of the general government, will render it nugatory.

Brutus.

VIII

10 January 1788

The next powers vested by this constitution in the general government, which we shall consider, are those, which authorise them to "borrow money on the credit of the United States, and to raise and support armies." I take these two together and connect them with the power to lay and collect taxes, duties, imposts and excises, because their extent, and the danger that will arise from the exercise of these powers, cannot be fully understood, unless they are viewed in relation to each other. 2.9.93

The power to borrow money is general and unlimited, and the clause so often before referred to, authorises the passing any laws proper and necessary to carry this into execution. Under this authority, the Congress may mortgage any or all the revenues of the union, as a fund to loan money upon, and it is probably, in this way, they may borrow of foreign nations, a principal sum, the interest of which will be equal to the annual revenues of the country.—By this means, they may create a national debt, so large, as to exceed the ability of the country ever to sink. I can scarcely contemplate a greater calamity that could befal this country, than to be loaded with a debt exceeding their ability ever to discharge. If this be a just remark, it is unwise and improvident to vest in the general government a power to borrow at discretion, without any limitation or restriction. 2.9.94

It may possibly happen that the safety and welfare of the country may require, that money be borrowed, and it is proper when such a necessity arises that the power should be exercised by the general government.—But it certainly ought never to be exercised, but on the most urgent occasions, and then we should not borrow of foreigners if we could possibly avoid it. 2.9.95

The constitution should therefore have so restricted, the exercise of this

power as to have rendered it very difficult for the government to practise it. The present confederation requires the assent of nine states to exercise this, and a number of the other important powers of the confederacy—and it would certainly have been a wise provision in this constitution, to have made it necessary that two thirds of the members should assent to borrowing money—when the necessity was indispensible, this assent would always be given, and in no other cause ought it to be.

2.9.96 The power to raise armies, is indefinite and unlimited, and authorises the raising forces, as well in peace as in war. Whether the clause which impowers the Congress to pass all laws which are proper and necessary, to carry this into execution, will not authorise them to impress men for the army, is a question well worthy consideration? If the general legislature deem it for the general welfare to raise a body of troops, and they cannot be procured by voluntary enlistments, it seems evident, that it will be proper and necessary to effect it, that men be impressed from the militia to make up the deficiency.

2.9.97 These powers taken in connection, amount to this: that the general government have unlimitted authority and controul over all the wealth and all the force of the union. The advocates for this scheme, would favor the world with a new discovery, if they would shew, what kind of freedom or independency is left to the state governments, when they cannot command any part of the property or of the force of the country, but at the will of the Congress. It seems to me as absurd, as it would be to say, that I was free and independent, when I had conveyed all my property to another, and was tenant to will to him, and had beside, given an indenture of myself to serve him during life.—The power to keep up standing armies in time of peace, has been justly objected, to this system, as dangerous and improvident. The advocates who have wrote in its favor, have some of them ridiculed the objection, as though it originated in the distempered brain of its opponents,[66] and others have taken pains to shew, that it is a power that was proper to be granted to the rulers in this constitution.[67] That you may be enabled to form a just opinion on this subject, I shall first make some remarks, tending to prove, that this power ought to be restricted, and then animadvert on the arguments which have been adduced to justify it.

2.9.98 I take it for granted, as an axiom in politic, that the people should never authorise their rulers to do any thing, which if done, would operate to their injury.

It seems equally clear, that in a case where a power, if given and exercised, will generally produce evil to the community, and seldom good—and which, experience has proved, has most frequently been exercised to the great injury, and very often to the total destruction of the government; in such a case, I say, this power, if given at all, should if possible be so restricted, as to prevent the ill effect of its operation.

2.9.99 Let us then enquire, whether standing armies in time of peace, would be

ever beneficial to our country—or if in some extraordinary cases, they might be necessary; whether it is not true, that they have generally proved a scourge to a country, and destructive of their liberty.

I shall not take up much of your time in proving a point, in which the friends of liberty, in all countries, have so universally agreed. The following extract from Mr. Pultney's speech, delivered in the house of commons of Great-Britain, on a motion for reducing the army, is so full to the point, and so much better than any thing I can say, that I shall be excused for inserting it.[68] He says, "I have always been, and always shall be against a standing army of any kind; to me it is a terrible thing, whether under that of a parliamentary, or any other designation; a standing army is still a standing army by whatever name it is called; they are a body of men distinct from the body of the people; they are governed by different laws, and blind obedience, and an entire submission to the orders of their commanding officer, is their only principle; the nations around us, sir, are already enslaved, and have been enslaved by those very means; by means of their standing armies they have every one lost their liberties; it is indeed impossible that the liberties of the people in any country can be preserved where a numerous standing army is kept up. Shall we then take our measures from the example of our neighbours? No, sir, on the contrary, from their misfortunes we ought to learn to avoid those rocks upon which they have split.

"It signifies nothing to tell me that our army is commanded by such 2.9.100
gentlemen as cannot be supposed to join in any measures for enslaving their country; it may be so; I have a very good opinion of many gentlemen now in the army; I believe they would not join in any such measures; but their lives are uncertain, nor can we be sure how long they will be kept in command, they may all be dismissed in a moment, and proper tools of power put in their room. Besides, sir, we know the passions of men, we know how dangerous it is to trust the best of men with too much power. Where was a braver army than that under Jul. Caesar? Where was there ever an army that had served their country more faithfully? That army was commanded generally by the best citizens of Rome, by men of great fortune and figure in their country, yet that army enslaved their country. The affections of the soldiers towards their country, the honor and integrity of the under officers, are not to be depended on. By the military law the administration of justice is so quick, and the punishment so severe, that neither the officer nor soldier dare dispute the orders of his supreme commander; he must not consult his own inclination. If an officer were commanded to pull his own father out of this house, he must do it; he dares not disobey; immediate death would be the sure consequence of the least grumbling: and if an officer were sent into the court of request, accompanied by a body of musketeers with screwed bayonets, and with orders to tell us what we ought to do, and how we were to vote: I know what would be the duty of this house; I know it would be our duty to order the officer to be hanged at the door of the lobby; but I doubt,

sir, I doubt much, if such a spirit could be found in the house, or in any house of commons that will ever be in England.

2.9.101 "Sir, I talk not of imaginary things? I talk of what has happened to an English house of commons, from an English army; not only from an English army, but an army that was raised by that very house of commons, an army that was paid by them, and an army that was commanded by generals appointed by them; therefore do not let us vainly imagine, that an army, raised and maintained by authority of parliament, will always be so submissive to them. If an army be so numerous as to have it in their power to overawe the parliament, they will be submissive as long as the parliament does nothing to disoblige their favourite general; but when that case happens, I am afraid, that in place of the parliament's dismissing the army, the army will dismiss the parliament."—If this great man's reasoning be just, it follows, that keeping up a standing army, would be in the highest degree dangerous to the liberty and happiness of the community—and if so, the general government ought not to have authority to do it; for no government should be empowered to do that which if done, would tend to destroy public liberty.

Brutus.

IX

17 January 1788

2.9.102 The design of civil government is to protect the rights and promote the happiness of the people.

For this end, rulers are invested with powers. But we cannot from hence justly infer that these powers should be unlimited. There are certain rights which mankind possess, over which government ought not to have any controul, because it is not necessary they should, in order to attain the end of its institution. There are certain things which rulers should be absolutely prohibited from doing, because, if they should do them, they would work an injury, not a benefit to the people. Upon the same principles of reasoning, if the exercise of a power, is found generally or in most cases to operate to the injury of the community, the legislature should be restricted in the exercise of that power, so as to guard, as much as possible, against the danger. These principles seem to be the evident dictates of common sense, and what ought to give sanction to them in the minds of every American, they are the great principles of the late revolution, and those which governed the framers of all our state constitutions. Hence we find, that all the state constitutions, contain either formal bills of rights, which set bounds to the powers of the legislature, or have restrictions for the same purpose in the body of the

constitutions. Some of our new political Doctors, indeed, reject the idea of the necessity, or propriety of such restrictions in any elective government, but especially in the general one.[69]

But it is evident, that the framers of this new system were of a contrary opinion, because they have prohibited the general government, the exercise of some powers, and restricted them in that of others. 2.9.103

I shall adduce two instances, which will serve to illustrate my meaning, as well as to confirm the truth of the preceeding remark.

In the 9th section, it is declared, "no bill of attainder shall be passed." This clause takes from the legislature all power to declare a particular person guilty of a crime by law. It is proper the legislature should be deprived of the exercise of this power, because it seldom is exercised to the benefit of the community, but generally to its injury.

In the same section it is provided, that "the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion and invasion, the public safety may require it." This clause limits the power of the legislature to deprive a citizen of the right of habeas corpus, to particular cases viz. those of rebellion and invasion; the reason is plain, because in no other cases can this power be exercised for the general good. 2.9.104

Let us apply these remarks to the case of standing armies in times of peace. If they generally prove the destruction of the happiness and liberty of the people, the legislature ought not to have power to keep them up, or if they had, this power should be so restricted, as to secure the people against the danger arising from the exercise of it.

That standing armies are dangerous to the liberties of a people was proved in my last number—If it was necessary, the truth of the position might be confirmed by the history of almost every nation in the world. A cloud of the most illustrious patriots of every age and country, where freedom has been enjoyed, might be adduced as witnesses in support of the sentiment. But I presume it would be useless, to enter into a laboured argument, to prove to the people of America, a position, which has so long and so generally been received by them as a kind of axiom. 2.9.105

Some of the advocates for this new system controvert this sentiment, as they do almost every other that has been maintained by the best writers on free government.—Others, though they will not expressly deny, that standing armies in times of peace are dangerous, yet join with these in maintaining, that it is proper the general government should be vested with the power to do it.[70] I shall now proceed to examine the arguments they adduce in support of their opinions. 2.9.106

A writer, in favor of this system, treats this objection as a ridiculous one.[71] He supposes it would be as proper to provide against the introduction of Turkish janizaries, or against making the Alcoran a rule of faith. 2.9.107

From the positive, and dogmatic manner, in which this author delivers his opinions, and answers objections made to his sentiments—one would con-

clude, that he was some pedantic pedagogue who had been accustomed to deliver his dogmas to pupils, who always placed implicit faith in what he delivered.

2.9.108 But, why is this provision so ridiculous? because, says this author, it is unnecessary. But, why is it unnecessary? "because, the principles and habits, as well as the power of the Americans are directly opposed to standing armies; and there is as little necessity to guard against them by positive constitutions, as to prohibit the establishment of the Mahometan religion." It is admitted then, that a standing army in time of peace, is an evil. I ask then, why should this government be authorised to do evil? If the principles and habits of the people of this country are opposed to standing armies in time of peace, if they do not contribute to the public good, but would endanger the public liberty and happiness, why should the government be vested with the power? No reason can be given, why rulers should be authorised to do, what, if done, would oppose the principles and habits of the people, and endanger the public safety, but there is every reason in the world, that they should be prohibited from the exercise of such a power. But this author supposes, that no danger is to be apprehended from the exercise of this power, because, if armies are kept up, it will be by the people themselves, and therefore, to provide against it, would be as absurd as for a man to "pass a law in his family, that no troops should be quartered in his family by his consent." This reasoning supposes, that the general government is to be exercised by the people of America themselves—But such an idea is groundless and absurd. There is surely a distinction between the people and their rulers, even when the latter are representatives of the former.—They certainly are not identically the same, and it cannot be disputed, but it may and often does happen, that they do not possess the same sentiments or pursue the same interests. I think I have shewn, that as this government is constituted, there is little reason to expect, that the interest of the people and their rulers will be the same.

2.9.109 Besides, if the habits and sentiments of the people of America are to be relied upon, as the sole security against the encroachment of their rulers, all restrictions in constitutions are unnecessary; nothing more is requisite, than to declare who shall be authorized to exercise the powers of government, and about this we need not be very careful—for the habits and principles of the people will oppose every abuse of power. This I suppose to be the sentiments of this author, as it seems to be of many of the advocates of this new system. An opinion like this, is as directly opposed to the principles and habits of the people of America, as it is to the sentiments of every writer of reputation on the science of government, and repugnant to the principles of reason and common sense.[72]

2.9.110 The idea that there is no danger of the establishment of a standing army, under the new constitution, is without foundation.

It is a well known fact, that a number of those who had an agency in

producing this system, and many of those who it is probable will have a principal share in the administration of the government under it, if it is adopted, are avowedly in favour of standing armies. It is a language common among them, "That no people can be kept in order, unless the government have an army to awe them into obedience; it is necessary to support the dignity of government, to have a military establishment."[73] And there will not be wanting a variety of plausible reason to justify the raising one, drawn from the danger we are in from the Indians on our frontiers, or from the European provinces in our neighbourhood. If to this we add, that an army will afford a decent support, and agreeable employment to the young men of many families, who are too indolent to follow occupations that will require care and industry, and too poor to live without doing any business[,] we can have little reason to doubt, but that we shall have a large standing army, as soon as this government can find money to pay them, and perhaps sooner.[74]

A writer, who is the boast of the advocates of this new constitution, has 2.9.111
taken great pains to shew, that this power was proper and necessary to be vested in the general government.

He sets out with calling in question the candour and integrity of those who advance the objection, and with insinuating, that it is their intention to mislead the people, by alarming their passions, rather than to convince them by arguments addressed to their understandings.[75]

The man who reproves another for a fault, should be careful that he himself be not guilty of it. How far this writer has manifested a spirit of candour, and has pursued fair reasoning on this subject, the impartial public will judge, when his arguments pass before them in review.

He first attempts to shew, that this objection is futile and disingenuous, 2.9.112
because the power to keep up standing armies, in time of peace, is vested, under the present government, in the legislature of every state in the union, except two. Now this is so far from being true, that it is expressly declared, by the present articles of confederation, that no body of forces "shall be kept up by any state, in time of peace, except such number only, as in the judgment of the United States in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such state."[76] Now, was it candid and ingenuous to endeavour to persuade the public, that the general government had no other power than your own legislature have on this head; when the truth is, your legislature have no authority to raise and keep up any forces?

He next tells us, that the power given by this constitution, on this head, is similar to that which Congress possess under the present confederation. As little ingenuity is manifested in this representation as in that of the former.

I shall not undertake to enquire whether or not Congress are vested with a 2.9.113
power to keep up a standing army in time of peace; it has been a subject warmly debated in Congress, more than once, since the peace; and one of

the most respectable states in the union, were so fully convinced that they had no such power, that they expressly instructed their delegates to enter a solemn protest against it on the journals of Congress, should they attempt to exercise it.

But should it be admitted that they have the power, there is such a striking dissimilarity between the restrictions under which the present Congress can exercise it, and that of the proposed government, that the comparison will serve rather to shew the impropriety of vesting the proposed government with the power, than of justifying it.

2.9.114 It is acknowledged by this writer, that the powers of Congress, under the present confederation, amount to little more than that of recommending. If they determine to raise troops, they are obliged to effect it through the authority of the state legislatures. This will, in the first instance, be a most powerful restraint upon them, against ordering troops to be raised. But if they should vote an army, contrary to the opinion and wishes of the people, the legislatures of the respective states would not raise them. Besides, the present Congress hold their places at the will and pleasure of the legislatures of the states who send them, and no troops can be raised, but by the assent of nine states out of the thirteen. Compare the power proposed to be lodged in the legislature on this head, under this constitution, with that vested in the present Congress, and every person of the least discernment, whose understanding is not totally blinded by prejudice, will perceive, that they bear no analogy to each other. Under the present confederation, the representatives of nine states, out of thirteen, must assent to the raising of troops, or they cannot be levied: under the proposed constitution, a less number than the representatives of two states, in the house of representatives, and the representatives of three states and an half in the senate, with the assent of the president, may raise any number of troops they please. The present Congress are restrained from an undue exercise of this power, from this consideration, they know [that] the state legislatures, through whose authority it must be carried into effect, would not comply with the requisition for the purpose, if it was evidently opposed to the public good: the proposed constitution authorizes the legislature to carry their determinations into execution, without the intervention of any other body between them and the people. The Congress under the present form are amenable to, and removable by, the legislatures of the respective states, and are chosen for one year only: the proposed constitution does not make the members of the legislature accountable to, or removeable by the state legislatures at all; and they are chosen, the one house for six, and the other for two years; and cannot be removed until their time of service is expired, let them conduct [themselves] ever so badly.—The public will judge, from the above comparison, how just a claim this writer has to that candour he affects to possess. In the mean time, to convince him, and the advocates for this system, that I possess some share of candor, I pledge myself to give up all opposition to it, on the head of standing armies, if the power to raise them be restricted as it is in the

present confederation; and I believe I may safely answer, not only for myself, but for all who make the objection, that they will be satisfied with less.

Brutus.

X

24 January 1788

To the People of the State of New-York.

The liberties of a people are in danger from a large standing army, not only because the rulers may employ them for the purposes of supporting themselves in any usurpations of power, which they may see proper to exercise, but there is great hazard, that an army will subvert the forms of the government, under whose authority, they are raised, and establish one, according to the pleasure of their leader. 2.9.115

We are informed, in the faithful pages of history, of such events frequently happening.—Two instances have been mentioned in a former paper.[77] They are so remarkable, that they are worthy of the most careful attention of every lover of freedom.—They are taken from the history of the two most powerful nations that have ever existed in the world; and who are the most renowned, for the freedom they enjoyed, and the excellency of their constitutions:—I mean Rome and Britain. 2.9.116

In the first, the liberties of the commonwealth was destroyed, and the constitution overturned, by an army, lead by Julius Cesar, who was appointed to the command, by the constitutional authority of that commonwealth. He changed it from a free republic, whose fame had sounded, and is still celebrated by all the world, into that of the most absolute despotism. A standing army effected this change, and a standing army supported it through a succession of ages, which are marked in the annals of history, with the most horrid cruelties, bloodshed, and carnage;—The most devilish, beastly, and unnatural vices, that ever punished or disgraced human nature. 2.9.117

The same army, that in Britain, vindicated the liberties of that people from the encroachments and despotism of a tyrant king, assisted Cromwell, their General, in wresting from the people, that liberty they had so dearly earned.

You may be told, these instances will not apply to our case:—But those who would persuade you to believe this, either mean to deceive you, or have not themselves considered the subject. 2.9.118

I firmly believe, no country in the world had ever a more patriotic army, than the one which so ably served this country, in the late war.

But had the General who commanded them, been possessed of the spirit 2.9.119

of a Julius Cesar or a Cromwell, the liberties of this country, had in all probability, terminated with the war: or had they been maintained, might have cost more blood and treasure, than was expended in the conflict with Great-Britain. When an anonimous writer addressed the officers of the army at the close of the war, advising them not to part with their arms, until justice was done them—the effect it had is well known.[78] It affected them like an electric shock. He wrote like Cesar; and had the commander in chief, and a few more officers of rank, countenanced the measure, the desperate resolution had been taken, to refuse to disband. What the consequences of such a determination would have been, heaven only knows.—The army were in the full vigor of health and spirits, in the habit of discipline, and possessed of all our military stores and apparatus. They would have acquired great accessions of strength from the country.—Those who were disgusted at our republican forms of government (for such there then were, of high rank among us) would have lent them all their aid.—We should in all probability have seen a constitution and laws, dictated to us, at the head of an army, and at the point of a bayonet, and the liberties for which we had so severely struggled, snatched from us in a moment. It remains a secret, yet to be revealed, whether this measure was not suggested, or at least countenanced, by some, who have had great influence in producing the present system.—Fortunately indeed for this country, it had at the head of the army, a patriot as well as a general; and many of our principal officers, had not abandoned the characters of citizens, by assuming that of soldiers, and therefore, the scheme proved abortive. But are we to expect, that this will always be the case? Are we so much better than the people of other ages and of other countries, that the same allurements of power and greatness, which led them aside from their duty, will have no influence upon men in our country? Such an idea, is wild and extravagant.—Had we indulged such a delusion, enough has appeared in a little time past, to convince the most credulous, that the passion for pomp, power and greatness, works as powerfully in the hearts of many of our better sort, as it ever did in any country under heaven.—Were the same opportunity again to offer, we should very probably be grossly disappointed, if we made dependence, that all who then rejected the overture, would do it again.

2.9.120 From these remarks, it appears, that the evil[79] to be feared from a large standing army in time of peace, does not arise solely from the apprehension, that the rulers may employ them for the purpose of promoting their own ambitious views, but that equal, and perhaps greater danger, is to be apprehended from their overturning the constitutional powers of the government, and assuming the power to dictate any form they please.

2.9.121 The advocates for power, in support of this right in the proposed government, urge that a restraint upon the discretion of the legislatures, in respect to military establishments in time of peace, would be improper to be imposed, because they say, it will be necessary to maintain small garrisons on

the frontiers, to guard against the depredations of the Indians, and to be prepared to repel any encroachments or invasions that may be made by Spain or Britain.[80]

The amount of this argument striped of the abundant verbages with which the author has dressed it, is this: 2.9.122

It will probably be necessary to keep up a small body of troops to garrison a few posts, which it will be necessary to maintain, in order to guard against the sudden encroachments of the Indians, or of the Spaniards and British; and therefore, the general government ought to be invested with power to raise and keep up a standing army in time of peace, without restraint; at their discretion.

I confess, I cannot perceive that the conclusion follows from the premises. Logicians say, it is not good reasoning to infer a general conclusion from particular premises: though I am not much of a Logician, it seems to me, this argument is very like that species of reasoning.

When the patriots in the parliament in Great-Britain, contended with such force of argument, and all the powers of eloquence, against keeping up standing armies in time of peace, it is obvious, they never entertained an idea, that small garrisons on their frontiers, or in the neighbourhood of powers, from whom they were in danger of encroachments, or guards, to take care of public arsenals would thereby be prohibited. 2.9.123

The advocates for this power farther urge that it is necessary, because it may, and probably will happen, that circumstances will render it requisite to raise an army to be prepared to repel attacks of an enemy, before a formal declaration of war, which in modern times has fallen into disuse.[81] If the constitution prohibited the raising an army, until a war actually commenced, it would deprive the government of the power of providing for the defence of the country, until the enemy were within our territory. If the restriction is not to extend to the raising armies in cases of emergency, but only to the keeping them up, this would leave the matter to the discretion of the legislature; and they might, under the pretence that there was danger of an invasion, keep up the army as long as they judged proper—and hence it is inferred, that the legislature should have authority to raise and keep up an army without any restriction. But from these premises nothing more will follow than this, that the legislature should not be so restrained, as to put it out of their power to raise an army, when such exigencies as are instanced shall arise. But it does not thence follow, that the government should be empowered to raise and maintain standing armies at their discretion as well in peace as in war. If indeed, it is impossible to vest the general government with the power of raising troops to garrison the frontier posts, to guard arsenals, or to be prepared to repel an attack, when we saw a power preparing to make one, without giving them a general and indefinite authority, to raise and keep up armies, without any restriction or qualification, then this reasoning might have weight; but this has not been proved nor can it be. 2.9.124

2.9.125 It is admitted that to prohibit the general government, from keeping up standing armies, while yet they were authorised to raise them in case of exigency, would be an insufficient guard against the danger. A discretion of such latitude would give room to elude the force of the provision.

It is also admitted that an absolute prohibition against raising troops, except in cases of actual war, would be improper; because it will be requisite to raise and support a small number of troops to garrison the important frontier posts, and to guard arsenals; and it may happen, that the danger of an attack from a foreign power may be so imminent, as to render it highly proper we should raise an army, in order to be prepared to resist them. But to raise and keep up forces for such purposes and on such occasions, is not included in the idea, of keeping up standing armies in times of peace.

2.9.126 It is a thing very practicable to give the government sufficient authority to provide for these cases, and at the same time to provide a reasonable and competent security against the evil of a standing army—a clause to the following purpose would answer the end:

As standing armies in time of peace are dangerous to liberty, and have often been the means of overturning the best constitutions of government, no standing army, or troops of any description whatsoever, shall be raised or kept up by the legislature, except so many as shall be necessary for guards to the arsenals of the United States, or for garrisons to such posts on the frontiers, as it shall be deemed absolutely necessary to hold, to secure the inhabitants, and facilitate the trade with the Indians: unless when the United States are threatened with an attack or invasion from some foreign power, in which case the legislature shall be authorised to raise an army to be prepared to repel the attack; provided that no troops whatsoever shall be raised in time of peace, without the assent of two thirds of the members, composing both houses of the legislature.

2.9.127 A clause similar to this would afford sufficient latitude to the legislature to raise troops in all cases that were really necessary, and at the same time competent security against the establishment of that dangerous engine of despotism a standing army.

The same writer who advances the arguments I have noticed, makes a number of other observations with a view to prove that the power to raise and keep up armies, ought to be discretionary in the general legislature; some of them are curious; he instances the raising of troops in Massachusetts and Pennsylvania, to shew the necessity of keeping a standing army in time of peace;[82] the least reflection must convince every candid mind that both these cases are totally foreign to his purpose—Massachusetts raised a body of troops for six months, at the expiration of which they were to disband of course; this looks very little like a standing army. But beside, was that commonwealth in a state of peace at that time? So far from it that they were in the most violent commotions and contents, and their legislature had formally declared that an unnatural rebellion existed within the state. The situation of Pennsylvania was similar; a number of

armed men had levied war against the authority of the state, and openly avowed their intention of withdrawing their allegiance from it. To what purpose examples are brought, of states raising troops for short periods in times of war or insurrections, on a question concerning the propriety of keeping up standing armies in times of peace, the public must judge.

2.9.128 It is farther said, that no danger can arise from this power being lodged in the hands of the general government, because the legislatures will be a check upon them, to prevent their abusing it.[83]

This is offered, as what force there is in it will hereafter receive a more particular examination. At present, I shall only remark, that it is difficult to conceive how the state legislatures can, in any case, hold a check over the general legislature, in a constitutional way. The latter has, in every instance to which their powers extend, complete controul over the former. The state legislatures can, in no case, by law, resolution, or otherwise, of right, prevent or impede the general government, from enacting any law, or executing it, which this constitution authorizes them to enact or execute. If then the state legislatures check the general legislatures [*sic*], it must be by exciting the people to resist constitutional laws. In this way every individual, or every body of men, may check any government, in proportion to the influence they may have over the body of the people. But such kinds of checks as these, though they sometimes correct the abuses of government, oftner destroy all government.[84]

2.9.129 It is further said, that no danger is to be apprehended from the exercise of this power, because it is lodged in the hands of representatives of the people; if they abuse it, it is in the power of the people to remove them, and chuse others who will pursue their interests.[85] Not to repeat what has been said before, That it is unwise in any people, to authorize their rulers to do, what, if done, would prove injurious—I have, in some former numbers, shewn, that the representation in the proposed government will be a mere shadow without the substance.[86] I am so confident that I am well founded in this opinion, that I am persuaded, if it was to be adopted or rejected, upon a fair discussion of its merits, without taking into contemplation circumstances extraneous to it, as reasons for its adoption, nineteen-twentieths of the sensible men in the union would reject it on this account alone: unless its powers were confined to much fewer objects than it embraces.

Brutus.

XI

31 January 1788

2.9.130 The nature and extent of the judicial power of the United States, proposed to be granted by this constitution, claims our particular attention.

Much has been said and written upon the subject of this new system on both sides, but I have not met with any writer, who has discussed the judicial powers with any degree of accuracy. And yet it is obvious, that we can form but very imperfect ideas of the manner in which this government will work, or the effect it will have in changing the internal police and mode of distributing justice at present subsisting in the respective states, without a thorough investigation of the powers of the judiciary and of the manner in which they will operate. This government is a complete system, not only for making, but for executing laws. And the courts of law, which will be constituted by it, are not only to decide upon the constitution and the laws made in pursuance of it, but by officers subordinate to them to execute all their decisions. The real effect of this system of government, will therefore be brought home to the feelings of the people, through the medium of the judicial power.[87] It is, moreover, of great importance, to examine with care the nature and extent of the judicial power, because those who are to be vested with it, are to be placed in a situation altogether unprecedented in a free country. They are to be rendered totally independent, both of the people and the legislature, both with respect to their offices and salaries. No errors they may commit can be corrected by any power above them, if any such power there be, nor can they be removed from office for making ever so many erroneous adjudications.

2.9.131 The only causes for which they can be displaced, is, conviction of treason, bribery, and high crimes and misdemeanors.

This part of the plan is so modelled, as to authorise the courts, not only to carry into execution the powers expressly given, but where these are wanting or ambiguously expressed, to supply what is wanting by their own decisions.

That we may be enabled to form a just opinion on this subject, I shall, in considering it,

1st. Examine the nature and extent of the judicial powers—and

2d. Enquire, whether the courts who are to exercise them, are so constituted as to afford reasonable ground of confidence, that they will exercise them for the general good.

2.9.132 With a regard to the nature and extent of the judicial powers, I have to regret my want of capacity to give that full and minute explanation of them that the subject merits. To be able to do this, a man should be possessed of a degree of law knowledge far beyond what I pretend to. A number of hard words and technical phrases are used in this part of the system, about the meaning of which gentlemen learned in the law differ.

2.9.133 Its advocates know how to avail themselves of these phrases. In a number of instances, where objections are made to the powers given to the judicial, they give such an explanation to the technical terms as to avoid them.

Though I am not competent to give a perfect explanation of the powers granted to this department of the government, I shall yet attempt to trace

some of the leading features of it, from which I presume it will appear, that they will operate to a total subversion of the state judiciaries, if not, to the legislative authority of the states.

In article 3d, sect. 2d, it is said, "The judicial power shall extend to all cases in law and equity arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority, &c." 2.9.134

The first article to which this power extends, is, all cases in law and equity arising under this constitution.

What latitude of construction this clause should receive, it is not easy to say. At first view, one would suppose, that it meant no more than this, that the courts under the general government should exercise, not only the powers of courts of law, but also that of courts of equity, in the manner in which those powers are usually exercised in the different states. But this cannot be the meaning, because the next clause authorises the courts to take cognizance of all cases in law and equity arising under the laws of the United States; this last article, I conceive, conveys as much power to the general judicial as any of the state courts possess.

The cases arising under the constitution must be different from those arising under the laws, or else the two clauses mean exactly the same thing. 2.9.135

The cases arising under the constitution must include such, as bring into question its meaning, and will require an explanation of the nature and extent of the powers of the different departments under it.

This article, therefore, vests the judicial with a power to resolve all questions that may arise on any case on the construction of the constitution, either in law or in equity.[88]

1st. They are authorised to determine all questions that may arise upon the meaning of the constitution in law. This article vests the courts with authority to give the constitution a legal construction, or to explain it according to the rules laid down for construing a law.—These rules give a certain degree of latitude of explanation. According to this mode of construction, the courts are to give such meaning to the constitution as comports best with the common, and generally received acceptation of the words in which it is expressed, regarding their ordinary and popular use, rather than their grammatical propriety. Where words are dubious, they will be explained by the context. The end of the clause will be attended to, and the words will be understood, as having a view to it; and the words will not be so understood as to bear no meaning or a very absurd one. 2.9.136

2d. The judicial are not only to decide questions arising upon the meaning of the constitution in law, but also in equity. 2.9.137

By this they are empowered, to explain the constitution according to the reasoning spirit of it, without being confined to the words or letter.[89]

"From this method of interpreting laws (says Blackstone) by the reason of them, arises what we call equity;" which is thus defined by Grotius, "the

correction of that, wherein the law, by reason of its universality, is deficient[``]; for since in laws all cases cannot be foreseen, or expressed, it is necessary, that when the decrees of the law cannot be applied to particular cases, there should some where be a power vested of defining those circumstances, which had they been foreseen the legislator would have expressed; and these are the cases, which according to Grotius, [``]lex non exacte definit, sed arbitrio boni viri permittet.''

2.9.138 The same learned author observes, ``That equity, thus depending essentially upon each individual case, there can be no established rules and fixed principles of equity laid down, without destroying its very essence, and reducing it to a positive law.''[90]

From these remarks, the authority and business of the courts of law, under this clause, may be understood.

They will give the sense of every article of the constitution, that may from time to time come before them. And in their decisions they will not confine themselves to any fixed or established rules, but will determine, according to what appears to them, the reason and spirit of the constitution. The opinions of the supreme court, whatever they may be, will have the force of law; because there is no power provided in the constitution, that can correct their errors, or controul their adjudications. From this court there is no appeal. And I conceive the legislature themselves, cannot set aside a judgment of this court, because they are authorised by the constitution to decide in the last resort. The legislature must be controuled by the constitution, and not the constitution by them. They have therefore no more right to set aside any judgment pronounced upon the construction of the constitution, than they have to take from the president, the chief command of the army and navy, and commit it to some other person. The reason is plain; the judicial and executive derive their authority from the same source, that the legislature do theirs; and therefore in all cases, where the constitution does not make the one responsible to, or controulable by the other, they are altogether independent of each other.

2.9.139 The judicial power will operate to effect, in the most certain, but yet silent and imperceptible manner, what is evidently the tendency of the constitution:—I mean, an entire subversion of the legislative, executive and judicial powers of the individual states. Every adjudication of the supreme court, on any question that may arise upon the nature and extent of the general government, will affect the limits of the state jurisdiction. In proportion as the former enlarge the exercise of their powers, will that of the latter be restricted.

2.9.140 That the judicial power of the United States, will lean strongly in favour of the general government, and will give such an explanation to the constitution, as will favour an extension of its jurisdiction, is very evident from a variety of considerations.

2.9.141 1st. The constitution itself strongly countenances such a mode of con-

struction. Most of the articles in this system, which convey powers of any considerable importance, are conceived in general and indefinite terms, which are either equivocal, ambiguous, or which require long definitions to unfold the extent of their meaning. The two most important powers committed to any government, those of raising money, and of raising and keeping up troops, have already been considered, and shewn to be unlimitted by any thing but the discretion of the legislature.[91] The clause which vests the power to pass all laws which are proper and necessary, to carry the powers given into execution, it has been shewn, leaves the legislature at liberty, to do every thing, which in their judgment is best.[92] It is said, I know, that this clause confers no power on the legislature, which they would not have had without it[93]—though I believe this is not the fact, yet, admitting it to be, it implies that the constitution is not to receive an explanation strictly, according to its letter; but more power is implied than is expressed. And this clause, if it is to be considered, as explanatory of the extent of the powers given, rather than giving a new power, is to be understood as declaring, that in construing any of the articles conveying power, the spirit, intent and design of the clause, should be attended to, as well as the words in their common acceptation.

This constitution gives sufficient colour for adopting an equitable construction, if we consider the great end and design it professedly has in view—these appear[94] from its preamble to be, "to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and posterity." The design of this system is here expressed, and it is proper to give such a meaning to the various parts, as will best promote the accomplishment of the end; this idea suggests itself naturally upon reading the preamble, and will countenance the court in giving the several articles such a sense, as will the most effectually promote the ends the constitution had in view—how this manner of explaining the constitution will operate in practice, shall be the subject of future enquiry.

2d. Not only will the constitution justify the courts in inclining to this mode of explaining it, but they will be interested in using this latitude of interpretation. Every body of men invested with office are tenacious of power; they feel interested, and hence it has become a kind of maxim, to hand down their offices, with all its rights and privileges, unimpared to their successors; the same principle will influence them to extend their power, and increase their rights; this of itself will operate strongly upon the courts to give such a meaning to the constitution in all cases where it can possibly be done, as will enlarge the sphere of their own authority. Every extension of the power of the general legislature, as well as of the judicial powers, will increase the powers of the courts; and the dignity and importance of the judges, will be in proportion to the extent and magnitude of the powers they exercise. I add, it is highly probable the emolument of the judges will be 2.9.142

increased, with the increase of the business they will have to transact and its importance. From these considerations the judges will be interested to extend the powers of the courts, and to construe the constitution as much as possible, in such a way as to favour it; and that they will do it, appears probable.

2.9.143 3d. Because they will have precedent to plead, to justify them in it. It is well known, that the courts in England, have by their own authority, extended their jurisdiction far beyond the limits set them in their original institution, and by the laws of the land.

The court of exchequer is a remarkable instance of this. It was originally intended principally to recover the king's debts, and to order the revenues of the crown. It had a common law jurisdiction, which was established merely for the benefit of the king's accomptants. We learn from Blackstone, that the proceedings in this court are grounded on a writ called quo minus, in which the plaintiff suggests, that he is the king's farmer or debtor, and that the defendant hath done him the damage complained of, by which he is less able to pay the king.[95] These suits, by the statute of Rutland, are expressly directed to be confined to such matters as specially concern the king, or his ministers in the exchequer. And by the articuli super cartas, it is enacted, that no common pleas be thenceforth held in the exchequer contrary to the form of the great charter: but now any person may sue in the exchequer. The surmise of being debtor to the king being matter of form, and mere words of course; and the court is open to all the nation.

2.9.144 When the courts will have a precedent[96] before them of a court which extended its jurisdiction in opposition to an act of the legislature, is it not to be expected that they will extend theirs, especially when there is nothing in the constitution expressly against it? and they are authorised to construe its meaning, and are not under any controul?

This power in the judicial, will enable them to mould the government, into almost any shape they please.—The manner in which this may be effected we will hereafter examine.

Brutus.

XII

7 February 1788

2.9.145 In my last, I shewed, that the judicial power of the United States under the first clause of the second section of article eight, would be authorized to explain the constitution, not only according to its letter, but according to its spirit and intention; and having this power, they would strongly incline to

give it such a construction as to extend the powers of the general government, as much as possible, to the diminution, and finally to the destruction, of that of the respective states.

I shall now proceed to shew how this power will operate in its exercise to effect these purposes. In order to perceive the extent of its influence, I shall consider,

First. How it will tend to extend the legislative authority.

Second. In what manner it will increase the jurisdiction of the courts, and

Third. The way in which it will diminish, and destroy, both the legislative and judicial authority of the United States.

First. Let us enquire how the judicial power will effect an extension of the legislative authority. 2.9.146

Perhaps the judicial power will not be able, by direct and positive decrees, ever to direct the legislature, because it is not easy to conceive how a question can be brought before them in a course of legal discussion, in which they can give a decision, declaring, that the legislature have certain powers which they have not exercised, and which, in consequence of the determination of the judges, they will be bound to exercise. But it is easy to see, that in their adjudications they may establish certain principles, which being received by the legislature, will enlarge the sphere of their power beyond all bounds.

It is to be observed, that the supreme court has the power, in the last resort, to determine all questions that may arise in the course of legal discussion, on the meaning and construction of the constitution. This power they will hold under the constitution, and independent of the legislature. The latter can no more deprive the former of this right, than either of them, or both of them together, can take from the president, with the advice of the senate, the power of making treaties, or appointing ambassadors. 2.9.147

In determining these questions, the court must and will assume certain principles, from which they will reason, in forming their decisions. These principles, whatever they may be, when they become fixed, by a course of decisions, will be adopted by the legislature, and will be the rule by which they will explain their own powers. This appears evident from this consideration, that if the legislature pass laws, which, in the judgment of the court, they are not authorised to do by the constitution, the court will not take notice of them; for it will not be denied, that the constitution is the highest or supreme law.[97] And the courts are vested with the supreme and uncontroulable power, to determine, in all cases that come before them, what the constitution means; they cannot, therefore, execute a law, which, in their judgment, opposes the constitution, unless we can suppose they can make a superior law give way to an inferior. The legislature, therefore, will not go over the limits by which the courts may adjudge they are confined. And there is little room to doubt but that they will come up to those bounds, as 2.9.148

often as occasion and opportunity may offer, and they may judge it proper to do it. For as on the one hand, they will not readily pass laws which they know the courts will not execute, so on the other, we may be sure they will not scruple to pass such as they know they will give effect, as often as they may judge it proper.

2.9.149 From these observations it appears, that the judgment of the judicial, on the constitution, will become the rule to guide the legislature in their construction of their powers.

What the principles are, which the courts will adopt, it is impossible for us to say; but taking up the powers as I have explained them in my last number, which they will possess under this clause, it is not difficult to see, that they may, and probably will, be very liberal ones.

We have seen, that they will be authorized to give the constitution a construction according to its spirit and reason, and not to confine themselves to its letter.

2.9.150 To discover the spirit of the constitution, it is of the first importance to attend to the principal ends and designs it has in view. These are expressed in the preamble, in the following words, viz. "We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution," &c. If the end of the government is to be learned from these words, which are clearly designed to declare it, it is obvious it has in view every object which is embraced by any government. The preservation of internal peace—the due administration of justice—and to provide for the defence of the community, seems to include all the objects of government; but if they do not, they are certainly comprehended in the words, "to provide for the general welfare." If it be further considered, that this constitution, if it is ratified, will not be a compact entered into by states, in their corporate capacities, but an agreement of the people of the United States, as one great body politic, no doubt can remain, but that the great end of the constitution, if it is to be collected from the preamble, in which its end is declared, is to constitute a government which is to extend to every case for which any government is instituted, whether external or internal. The courts, therefore, will establish this as a principle in expounding the constitution, and will give every part of it such an explanation, as will give latitude to every department under it, to take cognizance of every matter, not only that affects the general and national concerns of the union, but also of such as relate to the administration of private justice, and to regulating the internal and local affairs of the different parts.

2.9.151 Such a rule of exposition is not only consistent with the general spirit of the preamble, but it will stand confirmed by considering more minutely the different clauses of it.

The first object declared to be in view is, "To form a perfect union." It is to be observed, it is not an union of states or bodies corporate; had this been the case the existence of the state governments, might have been secured. But it is a union of the people of the United States considered as one body, who are to ratify this constitution, if it is adopted. Now to make a union of this kind perfect, it is necessary to abolish all inferior governments, and to give the general one compleat legislative, executive and judicial powers to every purpose. The courts therefore will establish it as a rule in explaining the constitution to give it such a construction as will best tend to perfect the union or take from the state governments every power of either making or executing laws. The second object is "to establish justice." This must include not only the idea of instituting the rule of justice, or of making laws which shall be the measure or rule of right, but also of providing for the application of this rule or of administering justice under it. And under this the courts will in their decisions extend the power of the government to all cases they possibly can, or otherwise they will be restricted in doing what appears to be the intent of the constitution they should do, to wit, pass laws and provide for the execution of them, for the general distribution of justice between man and man. Another end declared is "to insure domestic tranquility." This comprehends a provision against all private breaches of the peace, as well as against all public commotions or general insurrections; and to attain the object of this clause fully, the government must exercise the power of passing laws on these subjects, as well as of appointing magistrates with authority to execute them. And the courts will adopt these ideas in their expositions. I might proceed to the other clause, in the preamble, and it would appear by a consideration of all of them separately, as it does by taking them together, that if the spirit of this system is to be known from its declared end and design in the preamble, its spirit is to subvert and abolish all the powers of the state government, and to embrace every object to which any government extends.

As it sets out in the preamble with this declared intention, so it proceeds 2.9.152
in the different parts with the same idea. Any person, who will peruse the 8th section with attention, in which most of the powers are enumerated, will perceive that they either expressly or by implication extend to almost every thing about which any legislative power can be employed. But if this equitable mode of construction is applied to this part of the constitution; nothing can stand before it.

This will certainly give the first clause in that article a construction which I confess I think the most natural and grammatical one, to authorise the Congress to do any thing which in their judgment will tend to provide for the general welfare, and this amounts to the same thing as general and unlimited powers of legislation in all cases.

(*To be continued.*)

XII
14 February 1788

(*Continued from last Thursday's paper.*)

2.9.153 This same manner of explaining the constitution, will fix a meaning, and a very important one too, to the 12th [18th?] clause of the same section, which authorises the Congress to make all laws which shall be proper and necessary for carrying into effect the foregoing powers, &c. A voluminous writer in favor of this system, has taken great pains to convince the public, that this clause means nothing: for that the same powers expressed in this, are implied in other parts of the constitution.[98] Perhaps it is so, but still this will undoubtedly be an excellent auxilliary to assist the courts to discover the spirit and reason of the constitution, and when applied to any and every of the other clauses granting power, will operate powerfully in extracting the spirit from them.

2.9.154 I might instance a number of clauses in the constitution, which, if explained in an *equitable* manner, would extend the powers of the government to every case, and reduce the state legislatures to nothing; but, I should draw out my remarks to an undue length, and I presume enough has been said to shew, that the courts have sufficient ground in the exercise of this power, to determine, that the legislature have no bounds set to them by this constitution, by any supposed right the legislatures of the respective states may have, to regulate any of their local concerns.

2.9.155 I proceed, 2d, To inquire, in what manner this power will increase the jurisdiction of the courts.

I would here observe, that the judicial power extends, expressly, to all civil cases that may arise save such as arise between citizens of the same state, with this exception to those of that description, that the judicial of the United States have cognizance of cases between citizens of the same state, claiming lands under grants of different states. Nothing more, therefore, is necessary to give the courts of law, under this constitution, complete jurisdiction of all civil causes, but to comprehend cases between citizens of the same state not included in the foregoing exception.

2.9.156 I presume there will be no difficulty in accomplishing this. Nothing more is necessary than to set forth, in the process, that the party who brings the suit is a citizen of a different state from the one against whom the suit is brought, and there can be little doubt but that the court will take cognizance of the matter, and if they do, who is to restrain them?[99] Indeed, I will freely confess, that it is my decided opinion, that the courts ought to take cognizance of such causes, under the powers of the constitution. For one of the great ends of the constitution is, "to establish justice." This supposes that this cannot be done under the existing governments of the states; and there is certainly as good reason why individuals, living in the same state, should

have justice, as those who live in different states. Moreover, the constitution expressly declares, that "the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states." It will therefore be no fiction, for a citizen of one state to set forth, in a suit, that he is a citizen of another; for he that is entitled to all the privileges and immunities of a country, is a citizen of that country. And in truth, the citizen of one state will, under this constitution, be a citizen of every state.

2.9.157 But supposing that the party, who alledges that he is a citizen of another state, has recourse to fiction in bringing in his suit, it is well known, that the courts have high authority to plead, to justify them in suffering actions to be brought before them by such fictions. In my last number I stated, that the court of exchequer tried all causes in virtue of such a fiction. The court of king's bench, in England, extended their jurisdiction in the same way. Originally, this court held pleas, in civil cases, only of trespasses and other injuries alledged to be committed *vi et armis*. They might likewise, says Blackstone,[100] upon the division of the *aula regia*, have originally held pleas of any other civil action whatsoever (except in real actions which are now very seldom in use) provided the defendant was an officer of the court, or in the custody of the marshall or prison-keeper of this court, for breach of the peace, &c. In process of time, by a fiction, this court began to hold pleas of any personal action whatsoever; it being surmised, that the defendant has been arrested for a supposed trespass that "he has never committed, and being thus in the custody of the marshall of the court, the plaintiff is at liberty to proceed against him, for any other personal injury: which surmise of being in the marshall's custody, the defendant is not at liberty to dispute." By a much less fiction, may the pleas of the courts of the United States extend to cases between citizens of the same state. I shall add no more on this head, but proceed briefly to remark, in what way this power will diminish and destroy both the legislative and judicial authority of the states.

2.9.158 It is obvious that these courts will have authority to decide upon the validity of the laws of any of the states, in all cases where they come in question before them. Where the constitution gives the general government exclusive jurisdiction, they will adjudge all laws made by the states, in such cases, void *ab initio*. Where the constitution gives them concurrent jurisdiction, the laws of the United States must prevail, because they are the supreme law. In such cases, therefore, the laws of the state legislatures must be repealed, restricted, or so construed, as to give full effect to the laws of the union on the same subject. From these remarks it is easy to see, that in proportion as the general government acquires power and jurisdiction, by the liberal construction which the judges may give the constitution, will those of the states lose its rights, until they become so trifling and unimportant, as not to be worth having. I am much mistaken, if this system will not operate to effect this with as much celerity, as those who have the

administration of it will think prudent to suffer it. The remaining objections to the judicial power shall be considered in a future paper.

Brutus.

XIII

21 February 1788

2.9.159 Having in the two preceding numbers, examined the nature and tendency of the judicial power, as it respects the explanation of the constitution, I now proceed to the consideration of the other matters, of which it has cognizance.—The next paragraph extends its authority, to all cases, in law and equity, arising under the laws of the United States. This power, as I understand it, is a proper one. The proper province of the judicial power, in any government, is, as I conceive, to declare what is the law of the land.[101] To explain and enforce those laws, which the supreme power or legislature may pass; but not to declare what the powers of the legislature are. I suppose the cases in equity, under the laws, must be so construed, as to give the supreme court not only a legal, but equitable jurisdiction of cases which may be brought before them, or in other words, so, as to give them, not only the powers which are now exercised by our courts of law, but those also, which are now exercised by our court of chancery. If this be the meaning, I have no other objection to the power, than what arises from the undue extension of the legislative power. For, I conceive that the judicial power should be commensurate with the legislative. Or, in other words, the supreme court should have authority to determine questions arising under the laws of the union.

2.9.160 The next paragraph which gives a power to decide in law and equity, on all cases arising under treaties, is unintelligible to me. I can readily comprehend what is meant by deciding a case under a treaty. For as treaties will be the law of the land, every person who have rights or privileges secured by treaty, will have aid of the courts of law, in recovering them. But I do not understand, what is meant by equity arising under a treaty. I presume every right which can be claimed under a treaty, must be claimed by virtue of some article or clause contained in it, which gives the right in plain and obvious words; or at least, I conceive, that the rules for explaining treaties, are so well ascertained, that there is no need of having recourse to an equitable construction. If under this power, the courts are to explain treaties, according to what they conceive are their spirit, which is nothing less than a power to give them whatever extension they may judge proper, it is a dangerous and improper power. The cases affecting ambassadors, public ministers, and consuls—of admiralty and maritime jurisdiction; con-

troversies to which the United States are a party, and controversies between states, it is proper should be under the cognizance of the courts of the union, because none but the general government, can, or ought to pass laws on their subjects. But, I conceive the clause which extends the power of the judicial to controversies arising between a state and citizens of another state, improper in itself, and will, in its exercise, prove most pernicious and destructive.

It is improper, because it subjects a state to answer in a court of law, to 2.9.161
the suit of an individual.[102] This is humiliating and degrading to a government, and, what I believe, the supreme authority of no state ever submitted to.

The states are now subject to no such actions. All contracts entered into by individuals with states, were made upon the faith and credit of the states; and the individuals never had in contemplation any compulsory mode of obliging the government to fulfil its engagements.

The evil consequences that will flow from the exercise of this power, will 2.9.162
best appear by tracing it in its operation. The constitution does not direct the mode in which an individual shall commence a suit against a state or the manner in which the judgement of the court shall be carried into execution, but it gives the legislature full power to pass all laws which shall be proper and necessary for the purpose. And they certainly must make provision for these purposes, or otherwise the power of the judicial will be nugatory. For, to what purpose will the power of a judicial be, if they have no mode, in which they can call the parties before them? Or of what use will it be, to call the parties to answer, if after they have given judgement, there is no authority to execute the judgment? We must, therefore, conclude, that the legislature will pass laws which will be effectual in this head. An individual of one state will then have a legal remedy against a state for any demand he may have against a state to which he does not belong. Every state in the union is largely indebted to individuals. For the payment of these debts they have given notes payable to the bearer. At least this is the case in this state. Whenever a citizen of another state becomes possessed of one of these notes, he may commence an action in the supreme court of the general government; and I cannot see any way in which he can be prevented from recovering. It is easy to see, that when this once happens, the notes of the state will pass rapidly from the hands of citizens of the state to those of other states.

And when the citizens of other states possess them, they may bring suits 2.9.163
against the state for them, and by this means, judgments and executions may be obtained against the state for the whole amount of the state debt. It is certain the state, with the utmost exertions it can make, will not be able to discharge the debt she owes, under a considerable number of years, perhaps with the best management, it will require twenty or thirty years to discharge it. This new system will protract the time in which the ability of the state will

enable them to pay off their debt, because all the funds of the state will be transferred to the general government, except those which arise from internal taxes.

2.9.164 The situation of the states will be deplorable. By this system, they will surrender to the general government, all the means of raising money, and at the same time, will subject themselves to suits at law, for the recovery of the debts they have contracted in effecting the revolution.

The debts of the individual states will amount to a sum, exceeding the domestic debt of the United States; these will be left upon them, with power in the judicial of the general government, to enforce their payment, while the general government will possess an exclusive command of the most productive funds, from which the states can derive money, and a command of every other source of revenue paramount to the authority of any state.

2.9.165 It may be said that the apprehension that the judicial power will operate in this manner is merely visionary, for that the legislature will never pass laws that will work these effects. Or if they were disposed to do it, they cannot provide for levying an execution on a state, for where will the officer find property whereon to levy?

To this I would reply, if this is a power which will not or cannot be executed, it was useless and unwise to grant it to the judicial. For what purpose is a power given which it is imprudent or impossible to exercise? If it be improper for a government to exercise a power, it is improper they should be vested with it. And it is unwise to authorise a government to do what they cannot effect.

2.9.166 As to the idea that the legislature cannot provide for levying an execution on a state, I believe it is not well founded. I presume the last paragraph of the 8th section of article 1, gives the Congress express power to pass any laws they may judge proper and necessary for carrying into execution the power vested in the judicial department. And they must exercise this power, or otherwise the courts of justice will not be able to carry into effect the authorities with which they are invested. For the constitution does not direct the mode in which the courts are to proceed, to bring parties before them, to try causes, or to carry the judgment of the courts into execution. Unless they are pointed out by law, how are these to proceed, in any of the cases of which they have cognizance? They have the same authority to establish regulations in respect to these matters, where a state is a party, as where an individual is a party. The only difficulty is, on whom shall process be served, when a state is a party, and how shall execution be levied. With regard to the first, the way is easy, either the executive or legislative of the state may be notified, and upon proof being made of the service of the notice, the court may proceed to a hearing of the cause. Execution may be levied on any property of the state, either real or personal. The treasury may be seized by the officers of the general government, or any lands the property of the state, may be made subject to seizure and sale to satisfy any judgment against it. Whether the estate of any individual citizen may not be

made answerable for the discharge of judgments against the state, may be worth consideration. In some corporations this is the case.

If the power of the judicial under this clause will extend to the cases above stated, it will, if executed, produce the utmost confusion, and in its progress, will crush the states beneath its weight. And if it does not extend to these cases, I confess myself utterly at a loss to give it any meaning. For if the citizen of one state, possessed of a written obligation, given in pursuance of a solemn act of the legislature, acknowledging a debt due to the bearer, and promising to pay it, cannot recover in the supreme court, I can conceive of no case in which they can recover. And it appears to me ridiculous to provide for obtaining judgment against a state, without giving the means of levying execution. 2.9.167

Brutus.

XIV

28 February 1788

The second paragraph of sect. 2d. art. 3, is in these words: "In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.["] 2.9.168

Although it is proper that the courts of the general government should have cognizance of all matters affecting ambassadors, foreign ministers, and consuls; yet I question much the propriety of giving the supreme court original jurisdiction in all cases of this kind.

Ambassadors, and other public ministers, claim, and are entitled by the law of nations, to certain privileges, and exemptions, both for their persons and their servants.

The meanest servant of an ambassador is exempted by the law of nations from being sued for debt. Should a suit be brought against such an one by a citizen, through inadvertency or want of information, he will be subject to an action in the supreme court. All the officers concerned in issuing or executing the process will be liable to like actions. Thus may a citizen of a state be compelled, at great expence and inconveniency, to defend himself against a suit, brought against him in the supreme court, for inadvertently commencing an action against the most menial servant of an ambassador for a just debt. 2.9.169

The appellate jurisdiction granted to the supreme court, in this paragraph, has justly been considered as one of the most objectionable parts of the constitution: under this power, appeals may be had from the inferior courts

to the supreme, in every case to which the judicial power extends, except in the few instances in which the supreme court will have original jurisdiction.

2.9.170 By this article, appeals will lie to the supreme court, in all criminal as well as civil causes. This I know, has been disputed by some; but I presume the point will appear clear to any one, who will attend to the connection of this paragraph with the one that precedes it. In the former, all the cases, to which the power of the judicial shall extend, whether civil or criminal, are enumerated. There is no criminal matter, to which the judicial power of the United States will extend; but such as are included under some one of the cases specified in this section. For this section is intended to define all the cases, of every description, to which the power of the judicial shall reach. But in all these cases it is declared, the supreme court shall have appellate jurisdiction, except in those which affect ambassadors, other public ministers and consuls, and those in which a state shall be a party. If then this section extends the power of the judicial, to criminal cases, it allows appeals in such cases. If the power of the judicial is not extended to criminal matters by this section, I ask, by what part of this system does it appear, that they have any cognizance of them?

2.9.171 I believe it is a new and unusual thing to allow appeals in criminal matters. It is contrary to the sense of our laws, and dangerous to the lives and liberties of the citizen. As our law now stands, a person charged with a crime has a right to a fair and impartial trial by a jury of his country [county?], and their verdict is final. If he is acquitted no other court can call upon him to answer for the same crime. But by this system, a man may have had ever so fair a trial, have been acquitted by ever so respectable a jury of his country; and still the officer of the government who prosecutes, may appeal to the supreme court. The whole matter may have a second hearing. By this means, persons who may have disobliged those who execute the general government, may be subjected to intolerable oppression. They may be kept in long and ruinous confinement, and exposed to heavy and insupportable charges, to procure the attendence of witnesses, and provide the means of their defence, at a great distance from their places of residence.

2.9.172 I can scarcely believe there can be a considerate citizen of the United States, that will approve of this appellate jurisdiction, as extending to criminal cases, if they will give themselves time for reflection.

Whether the appellate jurisdiction as it respects civil matters, will not prove injurious to the rights of the citizens, and destructive of those privileges which have ever been held sacred by Americans, and whether it will not render the administration of justice intolerably burthensome, intricate, and dilatory, will best appear, when we have considered the nature and operation of this power.

2.9.173 It has been the fate of this clause, as it has of most of those, against which unanswerable objections have been offered, to be explained different ways, by the advocates and opponents to the constitution. I confess I do not know

what the advocates of the system, would make it mean, for I have not been fortunate enough to see in any publication this clause taken up and considered. It is certain however, they do not admit the explanation which those who oppose the constitution give it, or otherwise they would not so frequently charge them with want of candor, for alledging that it takes away the trial by jury[;] appeals from an inferior to a superior court, as practised in the civil law courts, are well understood. In these courts, the judges determine both on the law and the fact; and appeals are allowed from the inferior to the superior courts, on the whole merits: the superior tribunal will re-examine all the facts as well as the law, and frequently new facts will be introduced, so as many times to render the cause in the court of appeals very different from what it was in the court below.

If the appellate jurisdiction of the supreme court, be understood in the above sense, the term is perfectly intelligible. The meaning then is, that in all the civil causes enumerated, the supreme court shall have authority to re-examine the whole merits of the case, both with respect to the facts and the law which may arise under it, without the intervention of a jury; that this is the sense of this part of the system appears to me clear, from the express words of it, "in all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, &c." Who are the supreme court? Does it not consist of the judges? and they are to have the same jurisdiction of the fact as they are to have of the law. They will therefore have the same authority to determine the fact as they will have to determine the law, and no room is left for a jury on appeals to the supreme court. 2.9.174

If we understand the appellate jurisdiction in any other way, we shall be left utterly at a loss to give it a meaning; the common law is a stranger to any such jurisdiction: no appeals can lie from any of our common law courts, upon the merits of the case; the only way in which they can go up from an inferior to a superior tribunal is by habeas corpus before a hearing, or by certiorari, or writ of error, after they are determined in the subordinate courts; but in no case, when they are carried up, are the facts re-examined, but they are always taken as established in the inferior courts.[103] 2.9.175

(*To be continued.*)

XIV
6 March 1788

(*Continued.*)

It may still be insisted that this clause does not take away the trial by jury on appeals, but that this may be provided for by the legislature, under that 2.9.176

paragraph which authorises them to form regulations and restrictions for the court in the exercise of this power.

The natural meaning of this paragraph seems to be no more than this, that Congress may declare, that certain cases shall not be subject to the appellate jurisdiction, and they may point out the mode in which the court shall proceed in bringing up the causes before them, the manner of their taking evidence to establish the facts, and the method of the courts proceeding. But I presume they cannot take from the court the right of deciding on the fact, any more than they can deprive them of the right of determining on the law, when a cause is once before them; for they have the same jurisdiction as to fact, as they have as to the law. But supposing the Congress may under this clause establish the trial by jury on appeals, it[104] does not seem to me that it will render this article much less exceptionable. An appeal from one court and jury, to another court and jury, is a thing altogether unknown in the laws of our state, and in most of the states in the union. A practice of this kind prevails in the eastern states; actions are there commenced in the inferior courts, and an appeal lies from them on the whole merits to the superior courts: the consequence is well known, very few actions are determined in the lower courts; it is rare that a case of any importance is not carried by appeal to the supreme court, and the jurisdiction of the inferior courts is merely nominal; this has proved so burthensome to the people in Massachusetts, that it was one of the principal causes which excited the insurrection in that state, in the year past; very few sensible and moderate men in that state but what will admit, that the inferior courts are almost entirely useless, and answer very little purpose, save only to accumulate costs against the poor debtors who are already unable to pay their just debts.

2.9.177 But the operation of the appellate power in the supreme judicial of the United States, would work infinitely more mischief than any such power can do in a single state.

The trouble and expence to the parties would be endless and intolerable. No man can say where the supreme court are to hold their sessions, the presumption is, however, that it must be at the seat of the general government: in this case parties must travel many hundred miles, with their witnesses and lawyers, to prosecute or defend a suit; no man of midling fortune, can sustain the expence of such a law suit, and therefore the poorer and midling class of citizens will be under the necessity of submitting to the demands of the rich and the lordly, in cases that will come under the cognizance of this court. If it be said, that to prevent this oppression, the supreme court will set in different parts of the union, it may be replied, that this would only make the oppression somewhat more tolerable, but by no means so much as to give a chance of justice to the poor and midling class. It is utterly impossible that the supreme court can move into so many different parts of the Union, as to make it convenient or even tolerable to attend

before them with witnesses to try causes from every part of the United states; if to avoid the expence and inconvenience of calling witnesses from a great distance, to give evidence before the supreme court, the expedient of taking the deposition of witnesses in writing should be adopted, it would not help the matter. It is of great importance in the distribution of justice that witnesses should be examined face to face, that the parties should have the fairest opportunity of cross examining them in order to bring out the whole truth; there is something in the manner in which a witness delivers his testimony which cannot be committed to paper, and which yet very frequently gives a complexion to his evidence, very different from what it would bear if committed to writing, besides the expence of taking written testimony would be enormous; those who are acquainted with the costs that arise in the courts, where all the evidence is taken in writing, well know that they exceed beyond all comparison those of the common law courts, where witnesses are examined viva voce.

The costs accruing in courts generally advance with the grade of the court; thus the charges attending a suit in our common pleas, is much less than those in the supreme court, and these are much lower than those in the court of chancery; indeed the costs in the last mentioned court, are in many cases so exorbitant and the proceedings so dilatory that the suitor had almost as well give up his demand as to prosecute his suit. We have just reason to suppose, that the costs in the supreme general court will exceed either of our courts; the officers of the general court will be more dignified than those of the states, the lawyers of the most ability will practice in them, and the trouble and expence of attending them will be greater. From all these considerations, it appears, that the expence attending suits in the supreme court will be so great, as to put it out of the power of the poor and midling class of citizens to contest a suit in it. 2.9.178

From these remarks it appears, that the administration of justice under the powers of the judicial will be dilatory; that it will be attended with such an heavy expence as to amount to little short of a denial of justice to the poor and middling class of people who in every government stand most in need of the protection of the law; and that the trial by jury, which has so justly been the boast of our fore fathers as well as ourselves is taken away under them. 2.9.179

These extraordinary powers in this court are the more objectionable, because there does not appear the least necessity for them, in order to secure a due and impartial distribution of justice.

The want of ability or integrity, or a disposition to render justice to every suitor, has not been objected against the courts of the respective states: so far as I have been informed, the courts of justice in all the states, have ever been found ready, to administer justice with promptitude and impartiality according to the laws of the land; It is true in some of the states, paper money has been made, and the debtor authorised to discharge his debts with 2.9.180

it, at a depreciated value, in orders, tender laws have been passed, obliging the creditor to receive on execution other property than money in discharge of his demand, and in several of the states laws have been made unfavorable to the creditor and tending to render property insecure.

2.9.181 But these evils have not happened from any defect in the judicial departments of the states: the courts indeed are bound to take notice of these laws, and so will the courts of the general government be under obligation to observe the laws made by the general legislature not repugnant to the constitution: but so far have the judicial been from giving undue latitude of construction to laws of this kind, that they have invariably strongly inclined to the other side. All the acts of our legislature, which have been charged with being of this complexion, have uniformly received the strictest construction by the judges, and have been extended to no cases but to such as came within the strict letter of the law. In this way, have our courts, I will not say evaded the law, but so limited it in its operation as to work the least possible injustice: the same thing has taken place in Rhode-Island, which has justly rendered herself infamous, by her tenaciously adhering to her paper money system. The judges there gave a decision, in opposition to the words of the Statute, on this principle, that a construction according to the words of it, would contradict the fundamental maxims of their laws and constitution.[105]

2.9.182 No pretext therefore, can be formed, from the conduct of the judicial courts which will justify giving such powers to the supreme general court, for their decisions have been such as to give just ground of confidence in them, that they will firmly adhere to the principles of rectitude, and there is no necessity of lodging these powers in the courts, in order to guard against the evils justly complained of, on the subject of security of property under this constitution. For it has provided, "that no state shall emit bills of credit, or make any thing but gold and silver coin a tender in payment of debts." It has also declared, that "no state shall pass any law impairing the obligation of contracts."—These prohibitions give the most perfect security against those attacks upon property which I am sorry to say some of the states have but too wantonly made, by passing laws sanctioning fraud in the debtor against his creditor. For "this constitution will be the supreme law of the land, and the judges in every state will be bound thereby; any thing in the constitution and laws of any state to the contrary notwithstanding."

2.9.183 The courts of the respective states might therefore have been securely trusted, with deciding all cases between man and man, whether citizens of the same state or of different states, or between foreigners and citizens, and indeed for ought I see every case that can arise under the constitution or laws of the United States, ought in the first instance to be tried in the court of the state, except those which might arise between states, such as respect ambassadors, or other public ministers, and perhaps such as call in question the claim of lands under grants from different states. The state courts would

be under sufficient controul, if writs of error were allowed from the state courts to the supreme court of the union, according to the practice of the courts in England and of this state, on all cases in which the laws of the union are concerned, and perhaps to all cases in which a foreigner is a party.

This method would preserve the good old way of administering justice, 2.9.184
would bring justice to every man's door, and preserve the inestimable right of trial by jury. It would be following, as near as our circumstances will admit, the practice of the courts in England, which is almost the only thing I would wish to copy in their government.

But as this system now stands, there is to be as many inferior courts as Congress may see fit to appoint, who are to be authorised to originate and in the first instance to try all the cases falling under the description of this article; there is no security that a trial by jury shall be had in these courts, but the trial here will soon become, as it is in Massachusetts' inferior courts, mere matter of form; for an appeal may be had to the supreme court on the whole merits. This court is to have power to determine in law and in equity, on the law and the fact, and this court is exalted above all other power in the government, subject to no controul, and so fixed as not to be removeable, but upon impeachment, which I shall hereafter shew, is much the same thing as not to be removeable at all.

To obviate the objections made to the judicial power it has been said, that 2.9.185
the Congress, in forming the regulations and exceptions which they are authorised to make respecting the appellate jurisdiction, will make provision against all the evils which are apprehended from this article. On this I would remark, that this way of answering the objection made to the power, implies an admission that the power is in itself improper without restraint, and if so, why not restrict it in the first instance.

The just way of investigating any power given to a government, is to examine its operation supposing it to be put in exercise. If upon enquiry, it appears that the power, if exercised, would be prejudicial, it ought not to be given. For to answer objections made to a power given to a government, by saying it will never be exercised, is really admitting that the power ought not to be exercised, and therefore ought not to be granted.

Brutus.

XV
20 March 1788

(*Continued.*)[106]

I said in my last number, that the supreme court under this constitution 2.9.186
would be exalted above all other power in the government, and subject to no

controul. The business of this paper will be to illustrate this, and to shew the danger that will result from it. I question whether the world ever saw, in any period of it, a court of justice invested with such immense powers, and yet placed in a situation so little responsible. Certain it is, that in England, and in the several states, where we have been taught to believe, the courts of law are put upon the most prudent establishment, they are on a very different footing.

2.9.187 The judges in England, it is true, hold their offices during their good behaviour, but then their determinations are subject to correction by the house of lords; and their power is by no means so extensive as that of the proposed supreme court of the union.—I believe they in no instance assume the authority to set aside an act of parliament under the idea that it is inconsistent with their constitution. They consider themselves bound to decide according to the existing laws of the land, and never undertake to controul them by adjudging that they are inconsistent with the constitution—much less are they vested with the power of giving an *equitable* construction to the constitution.

2.9.188 The judges in England are under the controul of the leigislature, for they are bound to determine according to the laws passed by them. But the judges under this constitution will controul the legislature, for the supreme court are authorised in the last resort,[107] to determine what is the extent of the powers of the Congress; they are to give the constitution an explanation, and there is no power above them to set[108] aside their judgment. The framers of this constitution appear to have followed that of the British, in rendering the judges independent, by granting them their offices during good behaviour, without following the constitution of England, in instituting a tribunal in which their errors may be corrected; and without adverting to this, that the judicial under this system have a power which is above the legislative, and which indeed transcends any power before given to a judicial by any free government under heaven.

2.9.189 I do not object to the judges holding their commissions during good behaviour. I suppose it a proper provision provided they were made properly responsible. But I say, this system has followed the English government in this, while it has departed from almost every other principle of their jurisprudence, under the idea, of rendering the judges independent; which, in the British constitution, means no more than that they hold their places during good behaviour, and have fixed salaries, they have made the judges *independent*, in the fullest sense of the word. There is no power above them, to controul any of their decisions. There is no authority that can remove them, and they cannot be controuled by the laws of the legislature. In short, they are independent of the people, of the legislature, and of every power under heaven. Men placed in this situation will generally soon feel themselves independent of heaven itself. Before I proceed to illustrate the truth of these assertions, I beg liberty to make one remark—Though in my opin-

ion the judges ought to hold their offices during good behaviour, yet I think it is clear, that the reasons in favour of this establishment of the judges in England, do by no means apply to this country.

The great reason assigned, why the judges in Britain ought to be commissioned during good behaviour, is this, that they may be placed in a situation, not to be influenced by the crown, to give such decisions, as would tend to increase its powers and prerogatives. While the judges held their places at the will and pleasure of the king, on whom they depended not only for their offices, but also for their salaries, they were subject to every undue influence. If the crown wished to carry a favorite point, to accomplish which the aid of the courts of law was necessary, the pleasure of the king would be signified to the judges. And it required the spirit of a martyr, for the judges to determine contrary to the king's will.—They were absolutely dependent upon him both for their offices and livings. The king, holding his office during life, and transmitting it to his posterity as an inheritance, has much stronger inducements to increase the prerogatives of his office than those who hold their offices for stated periods, or even for life. Hence the English nation gained a great point, in favour of liberty. When they obtained the appointment of the judges, during good behaviour, they got from the crown a concession, which deprived it of one of the most powerful engines with which it might enlarge the boundaries of the royal prerogative and encroach on the liberties of the people. But these reasons do not apply to this country, we have no hereditary monarch; those who appoint the judges do not hold their offices for life, nor do they descend to their children. The same arguments, therefore, which will conclude in favor of the tenor of the judge's offices for good behaviour, lose a considerable part of their weight when applied to the state and condition of America. But much less can it be shewn, that the nature of our government requires that the courts should be placed beyond all account more independent, so much so as to be above controul. 2.9.190

I have said that the judges under this system will be *independent* in the strict sense of the word: To prove this I will shew—That there is no power above them that can controul their decisions, or correct their errors. There is no authority that can remove them from office for any errors or want of capacity, or lower their salaries, and in many cases their power is superior to that of the legislature. 2.9.191

1st. There is no power above them that can correct their errors or controul their decisions—The adjudications of this court are final and irreversible, for there is no court above them to which appeals can lie, either in error or on the merits.—In this respect it differs from the courts in England, for there the house of lords is the highest court, to whom appeals, in error, are carried from the highest of the courts of law.

2d. They cannot be removed from office or suffer a dimunition of their salaries, for any error in judgement or want of capacity. 2.9.192

It is expressly declared by the constitution,—"That they shall at stated times receive a compensation for their services which shall not be diminished during their continuance in office."

The only clause in the constitution which provides for the removal of the judges from office, is that which declares, that "the president, vice-president, and all civil officers of the United States, shall be removed from office, on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors." By this paragraph, civil officers, in which the judges are included, are removable only for crimes. Treason and bribery are named, and the rest are included under the general terms of high crimes and misdemeanors.—Errors in judgement, or want of capacity to discharge the duties of the office, can never be supposed to be included in these words, *high crimes and misdemeanors*. A man may mistake a case in giving judgment, or manifest that he is incompetent to the discharge of the duties of a judge, and yet give no evidence of corruption or want of integrity. To support the charge, it will be necessary to give in evidence some facts that will shew, that the judges commited the error from wicked and corrupt motives.

2.9.193 3d. The power of this court is in many cases superior to that of the legislature. I have shewed, in a former paper, that this court will be authorised to decide upon the meaning of the constitution, and that, not only according to the natural and ob[vious] meaning of the words, but also according to the spirit and intention of it.[109] In the exercise of this power they will not be subordinate to, but above the legislature. For all the departments of this government will receive their powers, so far as they are expressed in the constitution, from the people immediately, who are the source of power. The legislature can only exercise such powers as are given them by the constitution, they cannot assume any of the rights annexed to the judicial, for this plain reason, that the same authority which vested the legislature with their powers, vested the judicial with theirs—both are derived from the same source, both therefore are equally valid, and the judicial hold their powers independently of the legislature, as the legislature do of the judicial.—The supreme cort then have a right, independent of the legislature, to give a construction to the constitution and every part of it, and there is no power provided in this system to correct their construction or do it away. If, therefore, the legislature pass any laws, inconsistent with the sense the judges put upon the constitution, they will declare it void; and therefore in this respect their power is superior to that of the legislature.[110] In England the judges are not only subject to have their decisions set aside by the house of lords, for error, but in cases where they give an explanation to the laws or constitution of the country, contrary to the sense of the parliament, though the parliament will not set aside the judgement of the court, yet, they have authority, by a new law, to explain a former one, and

by this means to prevent a reception of such decisions. But no such power is in the legislature. The judges are supreme—and no law, explanatory of the constitution, will be binding on them.

From the preceding remarks, which have been made on the judicial powers proposed in this system, the policy of it may be fully developed.

I have, in the course of my observation on this constitution, affirmed and endeavored to shew, that it was calculated to abolish entirely the state governments, and to melt down the states into one entire government, for every purpose as well internal and local, as external and national. In this opinion the opposers of the system have generally agreed—and this has been uniformly denied by its advocates in public. Some individuals, indeed, among them, will confess, that it has this tendency, and scruple not to say, it is what they wish; and I will venture to predict, without the spirit of prophecy, that if it is adopted[111] without amendments, or some such precautions as will ensure amendments immediately after its adoption, that the same gentlemen who have employed their talents and abilities with such success to influence the public mind to adopt this plan, will employ the same to persuade the people, that it will be for their good to abolish the state governments as useless and burdensome. 2.9.194

Perhaps nothing could have been better conceived to facilitate the abolition of the state governments than the constitution of the judicial. They will be able to extend the limits of the general government gradually, and by insensible degrees, and to accomodate themselves to the temper of the people. Their decisions on the meaning of the constitution will commonly take place in cases which arise between individuals, with which the public will not be generally acquainted; one adjudication will form a precedent to the next, and this to a following one. These cases will immediately affect individuals only; so that a series of determinations will probably take place before even the people will be informed of them. In the mean time all the art and address of those who wish for the change will be employed to make converts to their opinion. The people will be told, that their state officers, and state legislatures are a burden and expence without affording any solid advantage, for that all the laws passed by them, might be equally well made by the general legislature. If to those who will be interested in the change, be added, those who will be under their influence, and such who will submit to almost any change of government, which they can be persuaded to believe will ease them of taxes, it is easy to see, the party who will favor the abolition of the state governments would be far from being inconsiderable.—In this situation, the general legislature, might pass one law after another, extending the general and abridging the state jurisdictions, and to sanction their proceedings would have a course of decisions of the judicial to whom the constitution has committed the power of explaining the constitution.—If the states remonstrated, the constitutional mode of decid- 2.9.195

ing upon the validity of the law, is with the supreme court, and neither people, nor state legislatures, nor the general legislature can remove them or reverse their decrees.

2.9.196 Had the construction of the constitution been left with the legislature, they would have explained it at their peril; if they exceed their powers, or sought to find, in the spirit of the constitution, more than was expressed in the letter, the people from whom they derived their power could remove them, and do themselves right: and indeed I can see no other remedy that the people can have against their rulers for encroachments of this nature. A constitution is a compact of a people with their rulers; if the rulers break the compact, the people have a right and ought to remove them and do themselves justice; but in order to enable them to do this with the greater facility, those whom the people chuse at stated periods, should have the power in the last resort to determine the sense of the compact; if they determine contrary to the understanding of the people, an appeal will lie to the people at the period when the rulers are to be elected, and they will have it in their power to remedy the evil; but when this power is lodged in the hands of men independent of the people, and of their representatives, and who are not, constitutionally, accountable for their opinions, no way is left to controul them but *with a high hand and an outstretched arm.*

Brutus.

XVI
10 April 1788

2.9.197 When great and extraordinary powers are vested in any man, or body of men, which in their exercise, may operate to the oppression of the people, it is of high importance that powerful checks should be formed to prevent the abuse of it.

Perhaps no restraints are more forcible, than such as arise from responsibility to some superior power.—Hence it is that the true policy of a republican government is, to frame it in such manner, that all persons who are concerned in the government, are made accountable to some superior for their conduct in office.—This responsibility should ultimately rest with the People. To have a government well administered in all its parts, it is requisite the different departments of it should be separated and lodged as much as may be in different hands. The legislative power should be in one body, the executive in another, and the judicial in one different from either—But still each of these bodies should be accountable for their conduct.[112] Hence it is impracticable, perhaps, to maintain a perfect distinction between these several departments—For it is difficult, if not impossible, to

call to account the several officers in government, without in some degree mixing the legislative and judicial. The legislature in a free republic are chosen[113] by the people at stated periods, and their responsibility consists, in their being amenable to the people. When the term, for which they are chosen, shall expire, who will then have opportunity to displace them if they disapprove of their conduct—but it would be improper that the judicial should be elective, because their business requires that they should possess a degree of law knowledge, which is acquired only by a regular education, and besides it is fit that they should be placed, in a certain degree in an independent situation, that they may maintain firmness and steadiness in their decisions.[114] As the people therefore ought not to elect the judges, they cannot be amenable to them immediately, some other mode of amenability must therefore be devised for these, as well as for all other officers which do not spring from the immediate choice of the people: this is to be effected by making one court subordinate to another, and by giving them cognizance of the behaviour of all officers; but on this plan we at last arrive at some supreme, over whom there is no power to controul but the people themselves. This supreme controling power should be in the choice of the people, or else you establish an authority independent, and not amenable at all, which is repugnant to the principles of a free government. Agreeable to these principles I suppose the supreme judicial ought to be liable to be called to account, for any misconduct, by some body of men, who depend upon the people for their places; and so also should all other great officers in the State, who are not made amenable to some superior officers. This policy seems in some measure to have been in view of the framers of the new system, and to have given rise to the institution of a court of impeachments—How far this Court will be properly qualified to execute the trust which will be reposed in them, will be the business of a future paper to investigate. To prepare the way to do this, it shall be the business of this, to make some remarks upon the constitution and powers of the Senate, with whom the power of trying impeachments is lodged.

The following things may be observed with respect to the constitution of the Senate. 2.9.198

1st. They are to be elected by the legislatures of the States and not by the people, and each State is to be represented by an equal number.

2d. They are to serve for six years, except that one third of those first chosen are to go out of office at the expiration of two years, one third at the expiration of four years, and one third at the expiration of six years, after which this rotation is to be preserved, but still every member will serve for the term of six years.

3d. If vacancies happen by resignation or otherwise, during the recess of the legislature of any State, the executive is authorised to make temporary appointments until the next meeting of the legislature.

4. No person can be a senator who has not arrived to the age of thirty

years, been nine years a citizen of the United States, and who is not at the time he is elected an inhabitant of the State for which he is elected.

2.9.199 The apportionment of members of Senate among the States is not according to numbers, or the importance of the States; but is equal. This, on the plan of a consolidated government, is unequal and improper; but is proper on the system of confederation—on this principle I approve of it.[115] It is indeed the only feature of any importance in the constitution of a confederated government. It was obtained after a vigorous struggle of that part of the Convention who were in favor of preserving the state governments. It is to be regretted, that they were not able to have infused other principles into the plan, to have secured the government of the respective states, and to have marked with sufficient precision the line between them and the general government.

2.9.200 The term for which the senate are to be chosen, is in my judgment too long, and no provision being made for a rotation will, I conceive, be of dangerous consequence.

It is difficult to fix the precise period for which the senate should be chosen. It is a matter of opinion, and our sentiments on the matter must be formed, by attending to certain principles. Some of the duties which are to be performed by the senate, seem evidently to point out the propriety of their term of service being extended beyond the period of that of the assembly. Besides as they are designed to represent the aristocracy of the country, it seems fit they should possess more stability, and so continue a longer period than that branch who represent the democracy. The business of making treaties and some other which it will be proper to commit to the senate, requires that they should have experience, and therefore that they should remain some time in office to acquire it.—But still it is of equal importance that they should not be so long in office as to be likely to forget the hand that formed them, or be insensible of their interests. Men long in office are very apt to feel themselves independent [and] to form and pursue interests separate from those who appointed them. And this is more likely to be the case with the senate, as they will for the most part of the time be absent from the state they represent, and associate with such company as will possess very little of the feelings of the middling class of people. For it is to be remembered that there is to be a *federal city*, and the inhabitants of it will be the great and the mighty of the earth. For these reasons I would shorten the term of their service to four years. Six years is a long period for a man to be absent from his home, it would have a tendency to wean him from his constituents.

2.9.201 A rotation in the senate, would also in my opinion be of great use. It is probable that senators once chosen for a state will, as the system now stands, continue in office for life. The office will be honorable if not lucrative. The persons who occupy it will probably wish to continue in it, and therefore use all their influence and that of their friends to continue in

office.—Their friends will be numerous and powerful, for they will have it in their power to confer great favors; besides it will before long be considered as disgraceful not to be re-elected. It will therefore be considered as a matter of delicacy to the character of the senator not to return him again.—Every body acquainted with public affairs knows how difficult it is to remove from office a person who is [has?] long been in it. It is seldom done except in cases of gross misconduct. It is rare that want of competent ability procures it. To prevent this inconvenience I conceive it would be wise to determine, that a senator should not be eligible after he had served for the period assigned by the constitution for a certain number of years; perhaps three would be sufficient. A farther benefit would be derived from such an arrangement; it would give opportunity to bring forward a greater number of men to serve their country, and would return those, who had served, to their state, and afford them the advantage of becoming better acquainted with the condition and politics of their constituents. It farther appears to me proper, that the legislatures should retain the right which they now hold under the confederation, of recalling their members. It seems an evident dictate of reason, that when a person authorises another to do a piece of business for him, he should retain the power to displace him, when he does not conduct according to his pleasure. This power in the state legislatures, under confederation, has not been exercised to the injury of the government, nor do I see any danger of its being so exercised under the new system. It may operate much to the public benefit.

These brief remarks are all I shall make on the organization of the senate. 2.9.202
The powers with which they are invested will require a more minute investigation.

This body will possess a strange mixture of legislative, executive and judicial powers, which in my opinion will in some cases clash with each other.

1. They are one branch of the legislature, and in this respect will possess equal powers in all cases with the house of representatives; for I consider the clause which gives the house of representatives the right of originating bills for raising a revenue as merely nominal, seeing the senate be[116] authorised to propose or concur with amendments.

2. They are a branch of the executive in the appointment of ambassadors and public ministers, and in the appointment of all other officers, not otherwise provided for; whether the forming of treaties, in which they are joined with the president, appertains to the legislative or the executive part of the government, or to neither, is not material.

3. They are part of the judicial, for they form the court of impeachments.

It has been a long established maxim, that the legislative, executive and 2.9.203
judicial departments in government should be kept distinct. It is said, I know, that this cannot be done. And therefore that this maxim is not just, or at least that it should only extend to certain leading features in a govern-

ment. I admit that this distinction cannot be perfectly preserved. In a due ballanced government, it is perhaps absolutely necessary to give the executive qualified legislative powers, and the legislative or a branch of them judicial powers in the last resort. It may possibly also, in some special cases, be adviseable to associate the legislature, or a branch of it, with the executive, in the exercise of acts of great national importance. But still the maxim is a good one, and a separation of these powers should be sought as far as is practicable. I can scarcely imagine that any of the advocates of the system will pretend, that it was necessary to accumulate all these powers in the senate.

2.9.204 There is a propriety in the senate's possessing legislative powers; this is the principal end which should be held in view in their appointment. I need not here repeat what has so often and ably been advanced on the subject of a division of the legislative power into two branches—The arguments in favor of it I think conclusive. But I think it equally evident, that a branch of the legislature should not be invested with the power of appointing officers. This power in the senate is very improperly lodged for a number of reasons—These shall be detailed in a future number.[117]

Brutus.

1. This essay was replied to by Pelatiah Webster in a pamphlet, "The Weakness of Brutus Exposed," published in Philadelphia in 1787; Ford, *Pamphlets* 117–31.

2. Cf. Federal Farmer I, 2.8.9, whose argument Brutus follows in many respects. Jeffrey points to numerous specific similarities. *University of Cincinnati Law Review* 40, no. 4 (1971): 643 ff., passim, nn. 5, 10, 32, 35, 45, 60, 64.

3. The taxing power is discussed at length in essays V–VIII, 2.9.55–101.

4. See V, 2.9.60–61; cf. Federal Farmer IV, 2.8.51.

5. These powers are discussed in VIII–X, 2.9.93–129.

6. The judiciary is discussed in XI–XV, 2.4.130–96.

7. The classic exposition of the meaning of the necessary and proper clause is in *The Federalist* no. 33. See also Ford, *Pamphlets* 233–34 (Aristides), 356–57 (Iredell); McMaster and Stone 329–30 (Wilson). For other Anti-Federalist discussions of this clause see Centinel V, 2.7.97; Federal Farmer IV, 2.8.49; Old Whig II, 3.3.12; Countryman from Dutchess County 6.6.25 n. 12.

8. Beccaria, *An Essay on Crimes and Punishments* ch. 26, "Of the Spirit of Family in States." On editions of this work, see above, Federal Farmer VI, 2.8.97 n. 61.

9. The subject of representation is discussed at length in essays III and IV, 2.9.34–54.

10. The argument here should, of course, be compared with that of Publius in *The Federalist* no. 10. See also Federal Farmer VIII, 2.8.108, and Cato III, 2.6.13 n. 8.

11. Cf. Federal Farmer III, 2.8.24 n. 19; and Brutus IV, 2.9.47.

12. See IV, 2.9.48–50.

13. Cf. the discussion of the executive by Franklin in the Philadelphia Convention. Farrand I, 81–85 (2 June). Brutus does not treat the executive at any length. For the discussion by Federal Farmer, see above, XIV, 2.8.177–82. See also "The Weakness of Brutus Exposed," Ford, *Pamphlets* 130; and Federal Farmer XIV, 2.8.179 n. 107.

14. Cf. Federal Farmer's scheme of rights, VI, 2.8.80–86.

15. See IX, 2.9.102.

16. Brutus' argument calls to mind the more famous but fundamentally identical statement by Publius: "If men were angels, no government would be necessary. If

angels were to govern men, neither external nor internal controuls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to controul the governed; and in the next place, oblige it to controul itself." *The Federalist* no. 51, 349. Publius differs from Brutus in his solution of this difficulty; and to understand the Anti-Federalists it is necessary to grasp both the difference and the profound agreement upon which it rests. See IV, 2.9.45–46; XVI, 2.9.197.

17. James Wilson, "Address to Citizens of Philadelphia," McMaster and Stone 143. Wilson's argument is not the "piece of foolishness" that William Jeffrey calls it (*University of Cincinnati Law Review* 40, no. 4 [1971]: 681n), as is suggested by the great efforts made by the Anti-Federalists in refuting it. The fuller view is that Wilson's argument has a solid basis but is insufficient to prove that a bill of rights is unnecessary.

18. These bills of rights can be found in Thorpe, *Federal and State Constitutions.*

19. The quotation is from the Maryland constitution of 1776, Declaration of Rights, arts. XXII–XXIII. Virginia, Massachusetts, New Hampshire, North Carolina, and Pennsylvania had similar provisions.

20. The quotation is from the North Carolina constitution, Declaration of Rights, art. XIV. Maryland, Massachusetts, New Hampshire, Virginia, and Pennsylvania had similar provisions.

21. The constitutions of Virginia, Pennsylvania, Maryland, North Carolina, New York, Massachusetts, New Hampshire had such provisions regarding the militia. The constitutions of Massachusetts, Maryland, New Hampshire prohibited the keeping up of standing armies "without the consent of the legislature." The constitutions of North Carolina, Pennsylvania, Virginia advised the avoidance of standing armies "in time of peace." See *The Federalist* no. 24, 153 and note; no. 26, 167–68. For Brutus' criticism of Publius on standing army, see IX, 2.9.111–14.

22. Edmund Randolph was one of the few Federalists who attempted to meet this objection (see Elliot III, 464–66), though McKean and Yeates made similar but weaker attempts in the Pennsylvania ratifying convention (McMaster and Stone 278–79, 296. For other Anti-Federal discussions of this point see, Federal Farmer IV, 2.8.51–52; XVI, 2.8.196–97; Agrippa XIV, 4.6.66; Henry 5.16.24, 36; Cincinnatus I, 6.1.4–5; Old Whig II, 3.3.7 ff.

23. Cf. Old Whig III, 3.3.15; Agrippa VI, 4.6.22 ff; One of the Common People 4.8.1 ff. For Federalist arguments, of varying penetration, that the new government will be limited by existing state bills of rights, see Ford, *Pamphlets* 48 (A Citizen of America), 148 (An American Citizen); Ford, *Essays* 398 (Williamson); McMaster and Stone 112–13 (A Citizen of Pennsylvania); New Hampshire *Freeman's Oracle* 18 January 1788 (Alfredus); *The Country Journal and the Poughkeepsie Advertiser* 15 April 1788 (A Friend to Good Government); *Massachusetts Centinel* 28 November 1787 (One of the Middle Interest). "The State Declarations of Rights are not repealed by this Constitution," Roger Sherman said in the Philadelphia convention, "and being in force are sufficient." Farrand II, 588 (12 September).

24. *The Spirit of Laws* XI, ch. 6. Brutus abridges the part of Montesquieu's comment relating to representation.

25. This is not a new paragraph in the original.

26. Cf. XVI, 2.9.199, where Brutus takes a different view. The question of the apportionment of Senate seats equally among the states was one on which the Anti-Federalists were equivocal. Like Brutus, The Federal Farmer seems to have changed his mind; see above, III, 2.8.28; XI, 2.8.143. See also Martin 2.4.35, 42; Centinel I, 2.7.23; Impartial Examiner 5.14.34; Symmes 4.5.2

27. Above, II, 2.9.23–24. For references to other Anti-Federalist discussions see Federal Farmer II, 2.8.15 n. 11.

28. Cf. *The Federalist* nos. 35–36; for other Anti-Federalist discussions of the natural aristocracy see Federal Farmer VII, 2.8.97 n. 64.

29. Brutus probably refers to Alexander Hamilton and Gouverneur Morris and perhaps also to Nathaniel Gorham and Rufus King. Farrand I, 282–311, 381–82, 375–76, 392–93, 513–14; II, 490–91. While no one in the Convention expressed exactly the opinion Brutus describes, John Francis Mercer—an Anti-Federalist and probably

the author of the essays of A [Maryland] Farmer—came close; see Farrand II, 284–85, and [Maryland] Farmer II, 5.1.29. Cf. Federal Farmer III, 2.8.37.

30. Essay IV, 2.9.45–54.

31. Note that Brutus does not seem to acknowledge here a possibility of a tyranny of the many; but see V, 2.9.56. Cf. Federal Farmer V, 2.8.60; Agrippa XVI, 4.6.73; [Maryland] Farmer I, 5.1.15 and n. 11; Henry 5.16.14. On the Federalist side see, in addition to *The Federalist* no. 10, Ford, *Pamphlets* 200–201 (Fabius), 354 (Marcus); *Virginia Independent Chronicle* 6 February 1788 (The State Soldier).

32. This is not a new paragraph in the original.

33. The original reads, "going into so an entire consolidation. . . ."

34. See below, V–X, 2.9.55–129. Many Anti-Federalists made this somewhat desperate argument. See Federal Farmer III, 2.8.34; Mason 5.17.1; Smith 6.12.9, 38–40.

35. The original reads, "and of whose talents . . . they are total strangers to. . . ."

36. Cf. *The Federalist* nos. 27–28.

37. Ephesians 5:29.

38. II Kings 8:13.

39. Compare Publius' different formulation of the issue, *The Federalist* nos. 23, 150–51; no. 31, 197. Cf. VI, 2.9.66.

40. See above, Federal Farmer XVII, 2.8.204 n. 123.

41. See Ford, *Pamphlets* 50–51 (A Citizen of America), and McMaster and Stone 274–75 (McKean, answering Smilie, ibid. 268–69). Cf. *The Federalist* no. 41. See Brutus VI, 2.9.77–78.

42. "As the duties of superintending the national defence and of securing the public peace against foreign or domestic violence, involve a provision for casualties and dangers, to which no possible limit can be assigned, the power of making that provision ought to know no other bounds than the exigencies of the nation and the resources of the community." *The Federalist* no. 31, 195–96, and generally nos. 30–36.

43. In addition to the discussion immediately following, Brutus treats this question in essay VI, 2.9.64–82.

44. Publius replies to this argument in *The Federalist* nos. 32 and 34.

45. "Money is, with propriety, considered as the vital principle of the body politic: as that which sustains its life and motion and enables it to perform its most essential functions." *The Federalist* no. 30, 188.

46. "This mode of reasoning," Publius argues, "appears sometimes to turn upon the suggestion of usurpation in the national government; at other times it seems to be designed only as a deduction from the constitutional operation of its intended powers. It is only in the latter light, that it can be admitted to have any pretensions to fairness. . . . [A]ll observations founded upon the danger of usurpation, ought to be referred to the composition and structure of the government, not to the nature or extent of its powers." *The Federalist* no. 31, 197.

47. Publius argues that there is no legal or constitutional power in either the national or the state governments to annul the taxes of the other. "And in practice there is little reason to apprehend any inconvenience; because in a short course of time the wants of the States will naturally reduce themselves within *a very narrow compass;* and in the interim, the United States will in all probability find it convenient to abstain wholly from those objects to which the particular States would be inclined to resort." *The Federalist* no. 34, 210. See above, Federal Farmer III, 2.8.39 n. 29.

48. Discussed in *The Federalist* no. 35, 216–18.

49. See above, n. 39.

50. No state interposition here!

51. See below, n. 84.

52. Brutus does not reach this question.

53. Matthew 6:24; Luke 16:13.

54. See Ford, *Pamphlets* 50 (Noah Webster). The quotation is slightly altered from the original. See above, V, 2.9.58.

55. P. 147. The statement is slightly revised from the original.

56. Publius does not quite admit this. He says: "*If* the circumstances of our coun-

try are such, as to demand a compound instead of a simple, a confederate instead of a sole government, the essential point which will remain to be adjusted, will be to discriminate the OBJECTS, *as far as it can be done*, which shall appertain to the different provinces or departments of power; allowing to each the most ample authority for fulfilling the objects committed to its charge." *The Federalist* no. 23 (italics added). Other Federalists were less equivocal. See for example McMaster and Stone 99 (P. Webster); Ford, *Pamphlets* 121–22, 128 (A Citizen of Philadelphia), 252 (Aristides); Ford, *Essays* 238 ff. (*A Citizen of New Haven*); Elliot III, 301 (Pendleton). On the critical importance of the line to be drawn between federal and state powers see Monroe 5.21.17 n. 8.

57. *The Federalist* no. 23, 147.

58. Cf. the forceful argument to this effect made by George Mason in the Constitutional Convention, Farrand I, 112–13 (4 June); see below, Old Whig VIII, 3.3.53–54; Philadelphiensis VI, 3.9.37–38; [Maryland] Farmer V, 5.1.82; Henry 5.16.2.

59. Publius calls the policy "of tying up the hands of government from offensive war founded upon reasons of state" a "novel and absurd experiment in politics." *The Federalist* no. 34, 211. See [New Hampshire] Farmer 4.17.4.

60. See the exchange between Roger Sherman and James Madison regarding the objects of the general government, Farrand I, 133–36 (6 June).

61. Cf. the intriguing discussion of the causes of hostilities among nations in *The Federalist* no. 6.

62. See above, Federal Farmer VI, 2.8.74 n. 54.

63. On the comparative merits of the administration of the state and federal governments, see *The Federalist* no. 27, 172–75. See below, n. 87.

64. See *The Federalist* no. 41, 276–77. Publius points out that the growth of imports for consumption will not grow in the same proportion as the growth of the population and economy in general. See Centinel II, 2.7.52 n. 30.

65. The space is left blank by Brutus.

66. See *The Federalist* no. 24; Ford, *Pamphlets* 51–52 (A Citizen of America), 234–35 (Aristides). Some of the more interesting of the Anti-Federal discussions of the dangers of a standing army, in addition to that of Brutus, are those of Federal Republican 3.6.21; DeWitt 4.3.9, 14, 28–29; [New Hampshire] Farmer 4.17.4; [Maryland] Farmer II, 5.1.33, 45–49; Impartial Examiner 5.14.8.

67. James Wilson, "Address to Citizens of Philadelphia," McMaster and Stone 145–46; *The Federalist* no. 24, 155–57. See also Ford, *Pamphlets* 234–36 (Aristides), 363–66 (Marcus); Ford, *Essays* 156–57 (A Landholder); McMaster and Stone 101, 107 (Pelatiah Webster), 170 (A Federalist), 373 (McKean). Other Federalists denied that a "standing army," properly speaking, is provided for. See An American Citizen [Tench Coxe], in Ford, *Pamphlets* 150–51.

68. *Cobbett's Parliamentary History of England* (London 1811), VIII (1722–33), 904–10.

69. See *The Federalist* no. 84; Mason 2.2.1 n. 1; Federal Farmer IV, 2.8.50 nn. 38–40.

70. See above, nn. 66, 67.

71. A Citizen of America [Noah Webster], "An Examination . . . ," Ford, *Pamphlets* 51–52. Compare in this connection the more subtle argument of An American Citizen [Tench Coxe] in Ford, *Pamphlets* 150–51.

72. See Federal Farmer X, 2.8.127 n. 80.

73. I know of no such Federalist language. James Wilson did argue in favor of the power to maintain a standing army as necessary to secure "the dignity and safety" of the country. McMaster and Stone 145–46. Publius, tough-minded as ever, admits that military force may have to turn inward: "seditions and insurrections are unhappily maladies as inseparable from the body politic, as tumours and eruptions from the natural body; that the idea of governing at all times by the simple force of law (which we have been told is the only admissible principle of republican government) has no place but in the reveries of those political doctors, whose sagacity disdains the admonitions of experimental instruction." *The Federalist* no. 28, 176. See above, n. 66.

The possibility of military enforcement of federal law was a major Anti-Federal concern. See for example Cato III, 2.6.17; Federal Farmer II, 2.8.23; Pennsylvania Convention Minority 3.11.50; Columbian Patriot 4.28.4.

74. Cf. Federal Farmer III, 2.8.39.

75. *The Federalist* no. 24, 154–55.

76. Article VI. Publius' statement is that "*two* only [of the State constitutions] contained an interdiction of standing armies in time of peace; that the other eleven had either observed a profound silence on the subject, or had in express terms admitted the right of the legislature to authorize their existence." *The Federalist* no. 24, 153–54. Publius refers in his next paper (no. 25, 159–60) to the provision in the Articles of Confederation prohibiting the states from maintaining military forces in peacetime without the consent of Congress.

77. VIII, 2.9.100–101.

78. See John Marshall, *The Life of George Washington* (Philadelphia 1804–7; 2d ed. 1839) IV, 74 ff.

79. The original reads, "evils."

80. *The Federalist* no. 24, 155–57.

81. *The Federalist* no. 25, 161; see Marcus [James Iredell], Ford, *Pamphlets* 364–65.

82. *The Federalist* no. 25, 162–63.

83. *The Federalist* no. 26, 168–69.

84. See VI, 2.9.69; Federal Farmer X, 2.8.128 n. 82; Henry, 5.16.2, 14; Smith 6.12.31. Publius agrees, indeed insists, that the states have no constitutional check on the general legislature. See *The Federalist* nos. 15, 16, especially p. 103. Cf. Tocqueville, *Democracy in America* I, ch. 8, subsection entitled "What Distinguishes the Federal Constitution of the United States of America from All Other Federal Constitutions." On the states as arms of revolution, see *The Federalist* no. 26, 168–69; no. 28, 178–79; no. 46, 321–22; no. 60, 404.

85. *The Federalist* no. 26, 169.

86. See above, essays I, III, IV, 2.9.1–21, 34–54.

87. The federal government, Publius argued two months earlier, "must carry its agency to the persons of the citizens. It must stand in need of no intermediate legislations, but must itself be empowered to employ the arm of the ordinary magistrate to execute its own resolutions. The majesty of the national authority must be manifested through the medium of the courts of justice. The government of the Union, like that of each State, must be able to address itself immediately to the hopes and fears of individuals; and to attract to its support those passions which have the strongest influence upon the human heart. It must, in short, possess all the means, and have a right to resort to all the methods, of executing the powers, with which it is intrusted, that are possessed and exercised by the governments of the particular States." *The Federalist* no. 16, 102–3. Jeffrey suggests that there is a contradiction between this argument and Publius' statement the next day (no. 17, 106) that the administration of private justice and other local matters can never be desirable cares of a general jurisdiction. Jeffrey thinks that the "entire performance must have been the cause of much innocent merriment among knowledgeable New Yorkers, as well as the source of considerable irritation to Federalists who had abundant reasons to feel ashamed at his sophistries and pettifogging." *University of Cincinnati Law Review* 40, no. 4 (1971): 739 n. 47. Careless readers may have had some such reactions, yet it is to be hoped that there were not many who came to such harsh conclusions on such slender evidence. Even on their face, the two statements of Publius are not contradictory, though it is true that their reconciliation points to further questions. These statements are, moreover, part of a larger and subtle argument by Publius looking to the eventual replacement of the state governments by the federal government in the hearts and minds of the people. The attentive reader can follow this argument in *The Federalist* no. 16, 102–3; no. 17, 106–7; and no. 27, 171–74. See above, Cato III, 2.6.20 n. 14; Federal Farmer XVIII, 2.8.13 n. 128. See John Smilie's keen analysis in the Pennsylvania ratifying convention, McMaster and Stone 270–71. See also Smith 6.12.31.

88. See below, n. 101.

89. Cf. Publius' narrow interpretation of the "equity" jurisdiction, *The Federalist* no. 80, 539–40.

90. Blackstone, *Commentaries on the Laws of England* I, 61–62.

91. Above, I, V–X, 2.9.1–21, 55–129.

92. See I, 2.9.1–21; V, 55–63; XII, 2.9.153 ff.

93. See *The Federalist* no. 33, and above, n. 7.

94. The original reads, "there appears."

95. *Commentaries on the Laws of England* III, 45.

96. The original reads, "president."

97. Cf. *The Federalist* no. 78, 524–26. The power of judicial review of acts of the legislature was explicitly assumed by a number of Anti-Federalist and Federalist writers, though seldom so thoughtfully argued as by Brutus and Publius. See for example, Martin 2.4.89; Centinel XVI, 2.7.168; Ford, *Pamphlets* 234 (Aristides); McMaster and Stone 304–5 (Wilson). Cf. the provocative comparison of Brutus and Publius in Ann Stuart Diamond, "The Anti-Federalist Brutus," *Political Science Reviewer,* Fall 1976.

98. Referring, no doubt, to *The Federalist,* especially no. 33, 204–6, and no. 44, 302–5, both of which had been published at this time.

99. See The Federal Farmer's suggestion that fictional residence or action in the federal city may be used as the means of establishing federal jurisdiction, XVIII, 2.8.224.

100. *Commentaries on the Laws of England* III, 42.

101. This premise is of course also the basis of Publius' different conclusion. No. 78, 525: "The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges as, a fundamental law. It therefore belongs to them to ascertain its meaning as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents." *The Federalist* no. 78.

102. See *Chisholm* v. *Georgia,* 2 Dall. 419 (1793), the outcry over which led to the Eleventh Amendment.

103. See the discussion of this matter by A Democratic Federalist, below, 3.5.6, and references collected there in n. 6.

104. The original reads, "on appeals. It does not. . ."

105. *Trevett* v. *Weeden* (1786); see Frank G. Bates, *Rhode Island and the Formation of the Union* (New York 1898) 131–38; William W. Crosskey, *Politics and the Constitution* II, 965–68.

106. The "continued" signifies merely that the series is being continued, apparently because there was a larger than usual gap between the last essay and this one. There is no essay by Brutus in the *Journal* between "XIV continued," on 6 March, and this one; and this is evidently the whole of XV and not a continuation.

107. The original reads, "last report."

108. The original reads, "sit aside."

109. See XI, 2.9.130–44.

110. Publius denies that the power to declare an act of the legislature void supposes "a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both, and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws rather than by those which are not fundamental." *The Federalist* no. 78, 525.

111. The original reads, "adoption."

112. Although a system of separation of functions is advocated, there is nothing in Brutus like Publius' discussion of separation of powers in *The Federalist* no. 51, and there is no articulation of the connection between the principle of *responsibility,* on

which so much emphasis is laid, and the principle of *balanced government*. See above, Centinel I, 2.7.7 n. 4; II, 2.7.50 n. 29.

113. The original reads, "in a free and republic are chosen. . . ." Jeffrey suggests "in a free and [equal?] republic are chosen. . . ." *University of Cincinnati Law Review* 40, no. 4 (1971): 773, n. 73.

114. Cf. *The Federalist* no. 78.

115. Cf. above, III, 2.9.40.

116. The original reads, "the Senate we authorised. . ."

117. No further essays were published.